

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MADELEINE CONNOR,
Plaintiff,
vs.

LEAH STEWART,
ERIC CASTRO, and
CHUCK McCORMICK,
Defendants.

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NO. 1:17-CV-00827-RP

EMERGENCY MOTION FOR STAY OF EXECUTION

TO THE HONORABLE U.S. DISTRICT JUDGE ROBERT L. PITMAN:

COMES NOW Madeleine Connor, Plaintiff, and files this Emergency Motion for Stay of Execution.

1. Federal Rule of Civil Procedure federal rule 62(f), and 69, 28 U.S.C. § 566(c), *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992), *In re Corral-Lerma*, 451 S.W.3d 385, 386 (Tex. 2014), *Dall. Merchant's & Concessionaire's Ass'n v. Dallas*, 852 S.W.2d 489 (Tex. 1993), and *Hous. Auth. of Stanton v. Bermea*, No. 11-20-00045-CV, 2020 Tex. App. LEXIS 4531, at *2 (Tex. App.—Eastland June 18, 2020) command that the federal judgment in this case be superseded on appeal and may not be executed.

2. Plaintiff Connor therefore prays that the Writ of Execution be stayed, or, in the alternative, that the portion of the Writ of Execution tied to the federal judgment in this case be stayed.

3. On August 27, 2020, Plaintiff first became aware of a notice of sale of her non-exempt real property located at 6304 Whitmarsh Valley Walk, Travis County, Austin, Texas, 78746. On the

same day, August 27, 2020, the District Clerk file-stamped a supersedeas bond,¹ and on the following day, accepted a cash payment of \$30,000.00 for issuance of the bond.²

4. The unserved notice of sale indicates that Connor's non-exempt real property described above will be sold at auction on September 1, 2020.³

5. Connor immediately took action to avoid the sale by requesting that the Travis County District Clerk accept her supersedeas to satisfy immediately the judgment, which the Clerk did. Connor also filed a request that the Court make findings under Tex. Prop. Code § 51.0011 and filed it with the clerk. Connor's lead counsel, Mr. David Rogers, also filed an endorsement and ratification of the motion and supersedeas filed and tendered by Ms. Connor.

6. Although Connor still maintains various irregularities exist, and intends to exercise those legal remedies to overturn the judgment and the Abstract of Judgment rendered by the Travis County District Clerk and issuance of the writ of execution upon which the sale of the property purportedly rests, Connor files this request for stay of execution by emergency hearing or submission to halt the execution on her real property located at 6304 Whitmarsh Valley Walk, Travis County, Austin, Texas 78746, on September 1, 2020.

7. Connor filed a Motion for Stay of Execution⁴ before the state 419th District Court on August 31, 2020. Rather than respond to the Motion, Defendant filed a Plea to the Jurisdiction⁵, alleging that the state court could not grant the stay because the Texas court "lacks subject matter jurisdiction to enter a temporary restraining order because Federal Rule of Civil Procedure 62 provides the sole method to stay the execution of a federal judgment and should be sought from the United States District Court."

¹ Exhibit A, Supersedeas Bond file-stamped September 27, 2020

² Exhibit B, Receipt for cash payment of \$30,000.00 for issuance of the bond

³ Exhibit C, Notice of Sale of 6304 Whitmarsh Valley Walk, Travis County, Austin, Texas, 78746.

⁴ Exhibit D, Motion for Stay of Execution

⁵ Exhibit E, Plea to the Jurisdiction

8. Though the Texas court did not state the basis of its ruling, the Texas court denied the Motion for Stay of Execution.⁶ As the only basis presented for denying such a stay was the jurisdictional argument, the Texas court implicitly affirmed that argument. Thus, Connor turns to this Court.

Request for Stay of Execution; entitled under Texas law applicable here

9. Because the judgment was used to create a lien on judgment debtor's property, the judgment debtor is entitled to the same stay of execution the state court would give to a similar state court judgment. Texas allows money judgments based on sanctions and attorney's fees to be superseded with no money bond paid. "[A]ttorney's fees are neither compensatory damages nor costs for purposes of superseding enforcement of a money judgment." *In re Corral-Lerma*, 451 S.W.3d 385, 386 (Tex. 2014). "[T]he Texas Supreme Court has ruled that attorney's fees and interest thereon are to be excluded from the amount of the supersedeas because attorney's fees are not compensatory damages or costs for purposes of the supersedeas statute." *Hous. Auth. of Stanton v. Bermea*, No. 11-20-00045-CV, 2020 Tex. App. LEXIS 4531, at *2 (Tex. App.—Eastland June 18, 2020).

10. Supersedeas money bonds must be paid on underlying damages. There are no underlying damages in this judgment, which consists entirely of attorney's fees as sanctions.⁷

11. Federal Rule of Civil Procedure federal rule 62(f) states: "**(f) Stay in Favor of a Judgment Debtor Under State Law.** If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give." The trial court's order awarded no compensatory damages or interest thereon; therefore, the amount of supersedeas required is \$ 0. *See In re Corral-*

⁶ Exhibit F, Order Denying Motion For Stay Of Execution

⁷ Exhibit G, Judgment in 17-CV-00827-RP, *Connor v. Stewart*.

Lerma, 451 S.W.3d 385 (Tex. 2014); *Shook v. Walden*, 304 S.W.3d 910 (Tex. App.—Austin 2010), *overruled on other grounds*, 451 S.W.3d 385 (Tex. 2014).”

Request for Stay because Texas officer may not replace Federal Marshall.

12. The federal judgment in question is neither final nor domesticated. A Texas officer, therefore, may not execute such a judgment. Only a federal marshal can execute on a non-domesticated federal judgment, and then only on a final federal judgment. Fed. R. Civ. Pro. 69. “Rule 69.Execution(a) In General. (1) *Money Judgment; Applicable Procedure*. A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.” 28 U.S.C. § 566(c) provides in part, that “the United States Marshal Service shall execute all lawful writs, process, and orders issued under authority of the United States, and shall command all necessary assistance to execute its duties.” The Constables of Travis County are not United States Marshalls, and may not execute orders under the authority of the United States. “The application of the doctrine of *expressio unius est exclusio alterius* further demonstrates the weakness of the [argument] that the [County] may regulate in this instance. That doctrine provides that the inclusion of a specific limitation excludes all others.” *Dall. Merchant's & Concessionaire's Ass'n v. Dallas*, 852 S.W.2d 489, 493 n.7 (Tex. 1993). See also *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).

13. The judgment in question has been appealed to the Fifth Circuit, where briefing is ongoing, and no order has been issued from that Court allowing execution. 20-50150, *Madeleine Connor v. Leah Stewart, et. al.* The gravamen of that appeal is that the District Court acted outside the instructions given to it by the Fifth Circuit panel on remand.

PRAYER

14. Plaintiff prays that the Court grant Plaintiff's request that the entire Writ of Execution be stayed, or, in the alternative, that the portion of the Writ of Execution tied to the federal judgment in this case be stayed.

Connor seeks a stay of execution sufficient to avoid a sale of her real property located at 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas 78746, on September 1, 2020. Connor prays for general relief.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Court grant a stay of execution under Federal Rule 62.

Respectfully submitted,

/s/ David Rogers

David Rogers

State Bar No. 24014089

Firm@DARogersLaw.com

LAW OFFICE OF DAVID ROGERS

595 Round Rock West Drive, Suite #102

Round Rock, Texas 78681

Phone: (512) 923-1836

Fax: (512) 685-1144

Attorney for Madeleine Connor

Exhibits

Exhibit A, Supersedeas Bond file-stamped September 27, 2020

Exhibit B, Receipt for cash payment of \$30,000.00 for issuance of the bond

Exhibit C, Notice of Sale of 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas, 78746.

Exhibit D, State Court Motion for Stay of Execution

Exhibit E, Plea to the Jurisdiction

Exhibit F, Order Denying Motion For Stay Of Execution

Exhibit G, Judgment in 17-CV-00827-RP, *Connor v. Stewart*

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CERTIFICATE OF SERVICE

I certify that on the 1st day of September 2020, I filed the foregoing response with the Court through its electronic filing system, and notice was provided to the following individuals:

Lowell F. Denton
Denton Navarro Rocha & Bernal, PC
2517 North Main Avenue
San Antonio, TX 78212
(210) 227-3243
Fax: 210/225-4481
Email: lowell.denton@rampage-sa.com

Scott M. Tschirhart
Denton Navarro Rocha Bernal & Zech,
P.C.
2500 W. William Cannon Drive, Suite 609
Austin, TX 78745
512-279-6431
Fax: 512-279-6438
Email: scott.tschirhart@rampage-aus.com

/s/ David Rogers
Attorney for Madeleine Connor

Exhibit “A”

AUG 27 2020 DF

At 1:23 P.M.
Velva L. Price, District Clerk
COPY

No. D-1-GN-15-003714

DAVID McINTYRE, et al.,
Plaintiffs

vs.

ERIC CASTRO, et al.,
Defendants.

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IN THE DISTRICT COURT

419TH JUDICIAL DISTRICT OF

TRAVIS COUNTY, TEXAS

SUPERSEDEAS

COMES NOW, Plaintiff Madeleine Connor, and files this her Supersedeas.

Pursuant to Texas Rule of Appellate Procedure 24 and Civil Practice & Remedies Code Chapter 52, Plaintiff Madeleine Connor, herewith files this deposit in lieu of bond.

1. The Western District of Texas signed an order on January 27, 2020, in cause number 1:17-cv-00827-RP [Dkt. 70];
2. The Defendants recorded the order referenced above on February 10, 2020;
3. On February 26, 2020, Plaintiff filed a notice of appeal to the order, which was an award of attorney's fees and sanctions;
4. The trial court's order awarded no compensatory damages or interest thereon; therefore, the amount of supersedeas required is \$ 0. *See In re Corral-Lerma*, 451 S.W.3d 385 (Tex. 2014); *Shook v. Walden*, 304 S.W.3d 910 (Tex. App.—Austin 2010), *overruled on other grounds*, 451 S.W.3d 385 (Tex. 2014);
5. Connor filed a supersedeas on February 26, 2020, but was unable to post a bond before the courthouse closed due to covid, and;
6. This document is resubmitted with the Travis County Clerk, with the sum of thirty-thousand dollars (\$30,000.00), as a deposit in lieu of bond. This amount should be sufficient to supersede all costs and amounts finally determined by appeal. See

attached. Ms. Connor intends to challenge this payment and the abstract of judgment that purports to allow execution on her non-exempt property by collateral attack.

Respectfully submitted,

/s/ Madeleine Connor

Madeleine Connor

SBOT # 24031897

P.O. Box 161962

Austin, Texas 78716-1962

(512) 289-2424

(512) 329-5229 (fax)

mgbconnor@yahoo.com

CERTIFICATE OF SERVICE

I certify that this instrument was served on the following persons on the 27th day of August, 2020: Lowell Denton and Scott M. Tschirhart, at the following email addresses: lowell.denton@rampage-sa.com, Scott.Tschirhart@rampage-aus.com.

/s/ David Rogers

David Rogers

Attorney for Madeleine Connor



San Antonio | Austin | Rio Grande Valley | Texas Gulf Coast
2500 W. William Cannon Drive, Suite 609 | Austin, Texas 78745-5320
V 512-279-6431 | F 512-279-6438

June 5, 2020

Velva L. Price
Travis County District Clerk
P.O. Box 679003
Austin, Texas 78767-9003

E-FILE NOTIFICATION

Re: *In Re David McIntyre*
Cause No. D-1-GN-15-003714, in the 419th Judicial District Court, Travis County, Texas
Request to Writ of Execution

Dear Ms. Price:

Please process this request for re-issuance of a Writ of Execution by the Clerk. The Office of Travis County Constable, Precinct No. 3 was unable to serve the original Writ prior to its expiration as their office was closed due to COVID-19. Therefore, re-issuance is required.

The information below is to be stated on the writ:

CAUSE NO. D-1-GN-15-003714

In re DAVID McINTYRE,	§	IN THE DISTRICT COURT OF
Petitioner,	§	
	§	
	§	419th JUDICIAL DISTRICT
	§	
	§	TRAVIS COUNTY, TEXAS

Attached is a copy of the *Order Granting Defendants' Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code* issued by the Honorable Judge Karin Crump on June 23, 2017 and file-stamped by your office on June 26, 2017. In the Order, Judge Crump awarded the following for the Defendants against Plaintiff Madeleine Connor, (jointly and severally with Plaintiff David McIntyre):

Velva L. Price
Travis County District Clerk
June 5, 2020
2 | Page

Attorney's Fees:	\$ 2,124.00
Costs:	\$ 76.67
Sanctions:	\$ 500.00
Thirteenth Court of Appeals (unsuccessful)	\$15,000.00
Thirteenth Court of Appeals Costs	\$ 20.00
Texas Supreme Court (unsuccessful)	<u>\$10,000.00</u>
TOTAL:	\$27,720.67

Attached is a copy of the filed and recorded Abstract of Judgment for the aforementioned amount.

On January 27, 2020, United States District Judge Robert Pitman issued an Order in Cause No. 1:17-cv-00827; styled *Madeleine Connor v. Leah Stewart, Eric Castro and Chuck McCormick*, in the Western District of Texas-Austin Division. In his Order, Judge Pitman granted Defendants' their attorneys' fees, costs and additional sanctions against Plaintiff. The award is as follows:

Attorney's Fees for Appeal:	\$13,636.50
Costs for Appeal:	\$ 276.27
Double Costs (in Appeal costs)	\$ 58.00
Attorney's Fees for District lawsuit (sanctions):	\$28,646.50
Costs for District lawsuit (sanctions):	<u>\$ 435.98</u>
TOTAL:	\$43,053.25

Attached is copy of the filed and recorded Order (Abstract of Judgment).

Plaintiff Madeleine Connor, individually, owes Texas Municipal League Intergovernmental Risk Pool ("TMLIRP") by and through former Defendants Eric Castro, Nancy Naeve, Gary Sertich, Leah Stewart and Charles McCormick the **total sum of \$70,773.92**.

Creditor to be listed in the Writ of Execution is:

Texas Municipal League Intergovernmental Risk Pool by and through Defendants Eric Castro; Nancy Naeve; Gary Sertich; Leah Stewart; and Charles McCormick, as Subrogee.

Address:

Texas Municipal League Intergovernmental Risk Pool
c/o Denton Navarro Rocha Bernal & Zech, P.C.
2500 W. William Cannon, Suite 609
Austin, Texas 78745

Velva L. Price
Travis County District Clerk
June 5, 2020
3 | Page

Debtor to be listed in the Writ of Execution is:

Madeleine Connor

Mailing Address: P.O. Box 161962

Physical Addresses: 6203 Olympic Overlook, Austin, Texas 78746 and 6304 Whitemarsh Vly Walk, Austin, Texas 78746.

Driver's License Number: Unknown

Social Security Number: Unknown

Date of Birth: Unknown

Attached are Travis County CAD records for the properties at 6203 Olympic Overlook and 6304 Whitemarsh Vly Walk in Austin, Travis County, Texas. Debtor claims a homestead exemption on Olympic Overlook property.

Payment of the fee for the re-issuance of this Writ will be paid electronically with this request.

If additional information is needed, please contact our office at (512) 279-6431.

Very truly yours,

Denton Navarro Rocha Bernal & Zech, P.C.
attorneys & counselors at law • rampagelaw.com



SCOTT M. TSCHIRHART
smtschirhart@rampagelaw.com

SMT/ha

Enclosures: As stated

cc: David Rogers
Law Office of David Rogers
595 Round Rock West Drive, Suite #102
Round Rock, Texas 78681

E-FILE NOTIFICATION

RETURN TO: Denton Navarro Rocha Bernal & Zech, P.C.
Attn: Scott M. Tschirhart
25000 W. William Cannon Drive, Suite 609
Austin, Texas 78745



THE STATE OF TEXAS
County of Travis

CAUSE NO. D-1-GN-15-003714

A B S T R A C T O F J U D G M E N T

I, **VELVA L. PRICE**, Clerk of the District Court of TRAVIS County, Texas, do hereby certify that in the District Court of Travis County, Texas, in a certain suit pending in the 419TH JUDICIAL DISTRICT COURT.

D-1-GN-15-003714, wherein:

DAVID MCINTYRE AND MADELEINE CONNOR

, Plaintiff(s)

and

ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH STEWARD, CHARLES MCCORMICK,
TOM CLARK AND JANE/JOHN DOE 1, 2, AND 3, WHOSE BIRTH DATES, SOCIAL SECURITY
NUMBERS AND DRIVER'S LICENSE ARE NOT AVAILABLE TO THE CLERK

, Defendant(s)

She said:

ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH CHARLES MCCORMICK AND JANE/JOHN DOE 1, 2,
AND 3

BY AND THROUGH THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL
C/O DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.
2500 W. WILLIAM CANNON, STE. 609
AUSTIN, TEXAS 78745

recovered judgment against the said

DAVID MCINTYRE
6204 AUGUSTA NATIONAL DRIVE
AUSTIN, TEXAS 78746

AND

MADELEINE CONNOR
6208 OLYMPIC OVERLOOK
AUSTIN, TEXAS 78746

AND

6304 WHITEMARSH VLY WALK
AUSTIN, TEXAS 78746

in the JUNE 23, 2017 JOINTLY AND SEVERALLY for the sum of TWENTY-SEVEN THOUSAND SEVEN HUNDRED AND
67/100 DOLLARS (\$27,700.67).

Said judgment is entitled to following credits, to-wit: NONE.

There is now still due on said judgment \$27,700.67, with interest as hereinabove set out.

Given under my hand and seal of office at Austin, Texas, December 02, 2019.



[Signature]
Velva L. Price
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 870002 (78767)
Austin, TX 78701

PREPARED BY: CARRISA ESCALANTE

D-1-GN-15-003714

☐ Original☐ File Copy

P46 - 000001175



2019188751

**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**

Dana DeBeauvoir

**Dana DeBeauvoir, County Clerk
Travis County, Texas**

Dec 02, 2019 02:13 PM

Fee: \$30.00

MEDINAE



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MADELEINE CONNOR,

Plaintiff,

v

LEAH STEWART,
ERIC CASTRO, and
CHUCK MCCORMICK,

Defendants

17-CV-827-RP

ORDER

Before the Court are Defendants Leah Stewart, Eric Castro, and Chuck McCormick's (collectively, "Defendants") Amended Motion for Attorneys' Fees, (Dkt. 59), and Motion for Additional Sanctions, (Dkt. 60). Having considered the parties' briefing, the record, and the relevant law, the Court will grant both motions.

I. BACKGROUND

Plaintiff Madeleine Connor ("Connor") lives in the Lost Creek Municipal Utility District ("Lost Creek") and Defendants Leah Stewart, Eric Castro, and Chuck McCormick (collectively, "Defendants") are all directors of Lost Creek (Compl., Dkt. 1, at 1-2). Connor has now sued Defendants three times in this Court for the same cause of action. *See McIntyre v. Castro*, No. 1:15-CV-1100 RP, 2016 WL 1714919, at *4 (W.D. Tex. Apr. 8, 2016), *aff'd*, 670 F. App'x 250 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016) ("McIntyre I"), *McIntyre v. Castro*, No. 1:16-CV-490 RP, 2017 WL 1483572, at *3 (W.D. Tex. Apr. 25, 2017), *aff'd in part sub nom. Connor v. Castro*, 719 F. App'x 376 (5th Cir. 2018) ("McIntyre II"), *Connor v. Stewart*, No. 1:17-CV-827-RP, 2018 WL 2994644, at *1 (W.D. Tex. June 14, 2018), *aff'd*, 770 F. App'x 244 (5th Cir. 2019). In all three cases, the Court determined

that Connor's claims were not well-grounded in law or fact and dismissed Connor's lawsuits for failure to state a plausible claim for relief. *See id.*

In *McIntyre I*, Connor alleged that Defendants sent a "pejorative" email with "evil intent" to Lost Creek residents "purporting to be an 'update' about" a lawsuit she filed against Defendants (*McIntyre I*, Compl., Dkt. 5, at 1). Upon reviewing the email, the Court determined that it was not pejorative, but rather that it "simply state[d] the basis of Plaintiffs' claims and that Defendants rebut them." *McIntyre I*, 2016 WL 1714919, at *4. The Court dismissed Connor's claim, holding that her allegations fell "well short of supporting a claim for First Amendment retaliation." *Id.* Connor appealed. The United States Court of Appeals for the Fifth Circuit ("Court of Appeals") affirmed the Court's opinion, specifically finding that Connor's allegations did "not constitute retaliation." *McIntyre v. Castro*, 670 F. App'x 250, 251 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016).

One week after the Court issued its order in *McIntyre I*, and while her appeal remained pending, Connor sued Defendants again (*See McIntyre II*, Notice of Removal, Dkt. 1, at 3). Connor's *McIntyre II* complaint—her seventh amended petition in state court—alleged a First Amendment retaliation claim "nearly identical" to her claim in *McIntyre I*. *McIntyre II*, 2017 WL 1483572, at *4. The Court again dismissed the claim. *Id.* Connor then moved to amend her complaint to add another First Amendment retaliation claim, the Court denied her motion. *Id.* at *6. Connor appealed that decision. *Connor v. Castro*, 719 F. App'x 376, 379 (5th Cir. 2018). The Court of Appeals affirmed this Court's decision, agreeing that it would have been futile to permit her to add the claim. *Id.* at 380.

In *McIntyre II*, the Court found that the record gave "the impression that the current litigation may be motivated as much or more by animosity between Connor and the Defendants

¹ There were two named plaintiffs in *McIntyre I* and *McIntyre II*—Madeleine Connor and David McIntyre. *See McIntyre I*, 2016 WL 1714919, *McIntyre II*, 2017 WL 1483572.

than any legally cognizable injury Plaintiffs may have suffered " *McIntyre II*, 2017 WL 1483572, at *6. The Court stated that Connor's conduct, which included her "presentation of an objectively benign e-update as defamatory," was troubling. *Id.* In continuing "to engage in motion practice to add allegations that [were] plainly insufficient"—particularly in light of this Court's prior order, which was subsequently affirmed by the Court of Appeals—this Court found that her conduct fell "well short of what this Court expects of its officers." *Id.* While the Court declined to sanction Connor at that time, it warned her it would "not hesitate to consider sanctions—whether on motion or on its own initiative" should Connor continue to litigate this issue in the future. *Id.*

Despite that warning, Connor filed a third lawsuit in this Court, again alleging a First Amendment retaliation claim on the basis of an objectively benign litigation update. (Am. Compl., Dkt. 8, at 2). In doing so, she repeated a claim that had been twice rejected by this Court and once by the Court of Appeals. *McIntyre I*, 2016 WL 1714919, at *4; *McIntyre II*, 2017 WL 1483572, at *4; *McIntyre v. Castro*, 670 F. App'x 250, 251 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016). Her only new theory of retaliation—that Defendants intended to punish her by filing a valid defensive motion in a lawsuit that she brought against them—was one the Court determined Connor, a lawyer, should understand to be frivolous. (Order, Dkt. 31, at 10). Again, this Court dismissed Connor's action as meritless. (*Id.*)

In dismissing Connor's third baseless lawsuit, this Court recited her history of vexatious litigation and found that Connor filed the action for "the improper purpose of harassing and imposing litigation costs on Defendants." (*Id.*) The Court determined that the appropriate Rule 11 sanction was to require Connor to pay Defendants' reasonable attorneys' fees and expenses related to this action. (*Id.* at 11). The Court then ordered Defendants to submit a motion for reasonable attorneys' fees and expenses. (*Id.* at 12). Concluding that a pre-filing injunction might be appropriate to deter Connor from using the courts "as a weapon of harassment" against the Defendants, the

Court also ordered the parties to attend a hearing to consider the proper scope of a pre-filing injunction (*Id.* at 8, 12)

Pursuant to the Court's order, Defendants filed a motion requesting \$16,235.16 in reasonable attorneys' fees and expenses (Mot. Att'y Fees, Dkt. 32, at ¶ 18). The Court ultimately denied Defendants' motion because they failed to comply with Rule 11's safe harbor provision (Order, Dkt. 42, at 3). However, after giving Connor the required notice and hearing, (Dkt. 31, 40), the Court imposed a pre-filing injunction against Connor *sua sponte*, barring her from filing any civil action "against Defendants or other officers of the Lost Creek Municipal Utility District, directly or indirectly, in the Western District of Texas without receiving written leave from a federal district judge for this district" (Order, Dkt. 42, at 9).

Connor appealed that order (Dkt. 44). Her appeal was dismissed because she didn't timely file her brief (Dkt. 47). The Fifth Circuit subsequently reinstated her appeal (Dkt. 48). The Fifth Circuit then affirmed this Court's order without an opinion (Dkt. 50, Ex. S). She petitioned for rehearing by the panel. (*Id.* at Ex. T). After nearly a year of defending the appeal, Defendants then filed a motion for appellate sanctions (*Id.* at Ex. U). In that motion, Defendants expressly argued that Connor's entire appeal was frivolous and sought sanctions pursuant to Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1912. (Dkt. 50, at 1 ("Now come Appellees, Leah Stewart, Eric Castro and Chuck McCormick and file their Motion for Sanctions pursuant to Federal Rule of Appellate Procedure 38", "The current appeal is frivolous on its face in that Appellant makes the same arguments that have been previously rejected by the trial court and this honorable Court", "[T]his Court [should] remand this case to the district court 'to determine the amount of costs and damages to be paid to appellees, as provided by 28 U.S.C. § 1912'"))

The Court of Appeals granted Defendants' motion and remanded to the district court "to determine the amount of costs and damages to be paid to appellees, as provided by 28 U.S.C.

§ 1912" (Dkt 49 at 1) The Court of Appeals further cautioned Connor, "a lawyer representing herself pro se," that "any further prolongation of this case will likely result in additional sanctions" (*Id.* at 2) Except for "the determination of costs and sanctions by the district court on remand," the Court of Appeals stated, in all caps, "THIS CASE IS OVER" (*Id.*)

On remand, Defendants filed two motions for attorneys' fees and costs, (Dkt 50, 53), neither of which complied with this Court's Local Rules W D Tex Loc. R. CV-7()(1) The Court ordered Defendants to properly confer with Connor and file an amended motion for attorneys' fees, costs, and sanctions that adhered to the local rules (Order, Dkt 56, at 2) The Court further ordered the parties to "advise the Court what other sanctions, if any, they believe to be appropriate" (*Id.* at 1) Defendants then filed an Amended Motion for Attorneys' Fees, (Dkt. 59), and a Motion for Additional Sanctions, (Dkt 60) Those motions are now before the Court, (Mot Att'y Fees, Dkt 59, Mot. Sanctions, Dkt 60) First, the Court will turn to Defendants' Motion for Attorneys' Fees, (Dkt 59), which requests attorneys' fees, costs, and expenses incurred defending against Connor's appeal Second, the Court will address Defendants' Motion for Additional Sanctions, (Dkt. 60), which requests sanctions in the form of attorneys' fees incurred defending this lawsuit before this Court

II. DISCUSSION

A. Motion for Attorneys' Fees, Costs, Expenses

Pursuant to the Court of Appeals' mandate, Defendants seek \$13,636.50 in attorneys' fees, \$276.27 in expenses, and double costs in the amount of \$58.00 for damages incurred in defending against Connor's appeal from October 1, 2018, the date Connor filed her Notice of Appeal, (Dkt 44), and June 21, 2019, the date the Court of Appeals granted Defendants' motion for sanctions and remanded to the District Court for a determination of the amount of costs and damages, (Dkt 49) (Mot Att'y Fees, Dkt 59, at 4-5)

Connor contends that the Court should deny Defendants' request for attorneys' fees and costs because it "does not comply with this District's rule concerning the form, content, timeframe, or conference provisions of a request for attorney's fees " (Pl's Resp, Dkt 61, at 2 (citing W D Tex Loc R CV-7(j)(1)-(3)) Alternatively, Connor asks that the Court limit Defendants' fees and costs to those associated with the delay caused by her filing a motion for rehearing rather than awarding Defendants the fees and costs accrued in defending against the appeal as a whole (*Id* at 12) The Court finds both of these arguments lacking and discusses each of them in turn below

1 Defendants' Motion Complies with the Local Rules

Connor contends that Defendants' motion for attorneys' fees should be denied—"save perhaps double costs, which 28 U S C § 1912 permits, presumably without any form of motion being timely and compliantly filed"—because it does not comply with Local Rule CV-7(j) On this point, Connor makes three arguments First, she contends that Defendants did not satisfy the "meet and confer" requirement under the local rules because "Defendants' counsel refused to have any substantive discussions with Plaintiff regarding their request for fees and sanctions and walked out of the conference after the passage of only fifteen minutes " (Dkt 61 at 3-5) Second, she argues that Defendants' motion did not certify her specific objections to Defendants' requested attorneys' fees, objections she alleges she could not specifically articulate "because only an oral number was proposed, with no detail " (Dkt 61 at 6) Third, Connor contends that while Defendants' motion includes a billing document, it does not comply with the drafting and certification requirements, specifically, she argues that attaching a 22-page billing statement without "a more easily readable table" skirts the simplicity the local rules "seem to encourage " (*Id*)

The Court concludes that Defendants' motion properly complies with the local rules *See* W D Tex Loc R CV-7(j) It is undisputed that Defendants' counsel met in person with Connor on July 30, 2019 to discuss their intention to seek attorneys' fees (*See* Pl's Resp, Dkt 61, at 4) During

that meeting, Defendants "repeatedly asked" for Connor's objections to the fee amount, but Connor only offered a specific objection to one eight-hour billing entry (Defs' Reply, Dkt 59, at 6). Defendants noted this objection in their motion and properly "certified the reason why the matter could not be resolved by agreement" W D Tex. Loc. R. CV-7(j), (*see also* Mot. Att'y Fees, Dkt 59, at 5-7 ("The parties could not reach an agreement because Plaintiff offered [an amount] inconsistent with Defense counsel's authority")) And Rule 7(j) imposes no time requirement for a conference. *See* W D Tex. Loc. R. CV-7(j). From the Court's perspective, fifteen minutes is sufficient to entertain that single objection.

Moreover, Connor's contention that she "could not articulate a specific objection" to "an oral request for \$40,000" because Defendants tendered the fee-bill to her "only 30 minutes before the meeting convened" is a flagrant misrepresentation of the facts (Pl.'s Resp., Dkt 61, at 5). Defendants provided statements and draft bills with their Motion for Attorneys' Fees and Costs pursuant to the order from the Court of Appeals, (Dkt 49), on June 25, 2019 (Orig. Mot. Att'y Fees, Dkt. 50). Defendants emailed Connor with an updated set of statements on July 24, 2019, a full six days before the conference (Email, Dkt 63-1, at 1). In that same email, Defendants' counsel expressly indicated that Defendants intended to seek attorneys' fees and costs incurred for the entire appeal and additional sanctions in the form of attorneys' fees and costs related to the rest of the case (*Id.* at 1). Connor had the time and the information necessary to formulate her objections ahead of the conference and did not do so. She cannot now misrepresent the record to manufacture noncompliance with the local rules in an attempt to evade sanctions.

Connor's argument that Defendants' motion should be denied because it "does not comply with the drafting and certification requirements of the rule" is likewise baseless (Pl.'s Resp., Dkt 61, at 6). Defendants' motion contains the requisite chronological billing activity, affidavit, and memorandum setting forth the method by which fees were computed W D Tex. Loc. R. CV-

7(j) There is no requirement that a movant for reasonable attorneys' fees include "a more easily readable table," (Pl's Resp, Dkt 61, at 6), billing records provide sufficient support for the legal services rendered by Defendants in defending this action. *People's Capital & Leasing Corp. v McClung*, No 5:17-cv-484-OLG, 2018 WL 7291447, at *2 (W.D. Tex. Aug. 20, 2018) ("Plaintiff's attorney's fees request is properly supported by copies of the invoices for legal services.") Moreover, Defendant's counsel attested to the reasonableness of these rates in an affidavit attached to the motion (Tschirhart Aff, Dkt. 59-2, at 1-2), W.D. Tex. Loc. R. CV-7(j)

Thus, the Court concludes that Defendants' Motion for Attorneys' Fees complies with the local rules and Connor's arguments to the contrary are, predictably, without merit. The Court will now turn to Connor's next argument pertaining to the scope of the Court of Appeals' mandate.

2. Defendants are Entitled to Fees and Costs for the Entire Appeal

Connor contends that Defendants' request for attorneys' fees and costs incurred for the entire appeal should be denied because the Court of Appeals "rejected" Defendants' "repeated requests in the appellate court to award fees and sanctions for frivolous appeal." (Pl's Resp, Dkt 61, at 8) In support of this argument, Connor cites to the text of the Court of Appeals' order, which she notes omits the words "frivolous" and "Rule 38" and cites only to 28 U.S.C. § 1912. *Id.* Connor interprets these omissions to mean the Court of Appeals denied Defendants' request for sanctions pursuant to Rule 38 and instead limited the scope of sanctions on remand to the delay associated with Connor's decision to file a motion for panel rehearing. (*Id.*)

Under Federal Rule of Appellate Procedure 38, "[i]f a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Meanwhile, 28 U.S.C. § 1912 provides that "[w]here a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and

single or double costs " 28 U.S.C. § 1912. Importantly, the rule—unlike the statute—allows a court to order damages and costs for a frivolous appeal without finding that the appeal resulted in delay. See Fed. R. App. P. 38 advisory committee notes to 1967 adoption, *see also State of Tex. v. Gulf Water Benefaction Co.*, 679 F.2d 85, 87 n.1 (5th Cir. 1982), *Hagerty v. Succession of Clement*, 749 F.2d 217, 222 (5th Cir. 1984) ("[T]he courts of appeals quite properly allow damages, attorney's fees and other expenses incurred by an appellee if the appeal is frivolous without requiring a showing that the appeal resulted in delay.") An award of damages and double costs as sanctions for the filing of a frivolous appeal "may be made against an appellant under 28 U.S.C. § 1912 and Fed. R. App. P. 38." *Olympia Co. v. Celotex Corp.*, 771 F.2d 888, 893 (5th Cir. 1985). Thus, if a frivolous appeal results in delay, courts may use Rule 38 and 28 U.S.C. § 1912 interchangeably. See *Exhibitors Poster Exch., Inc. v. Nat'l Screen Serv. Corp.*, 78 F.R.D. 192, 195 (E.D. La. 1978).

Having reviewed the Court of Appeals' order and the appellate record as a whole, the Court concludes that it may determine costs and damages related to the entire appeal; that is, the Court of Appeals' mandate does not limit apportionable damages to the delay associated with Connor's motion for panel rehearing. As an initial matter, the Court of Appeals *granted* Defendants' motion for appellate sanctions. (See Fifth Cir. Order, Dkt. 49, at 1 ("IT IS ORDERED that appellees' motion for sanctions, attorney fees, and costs is **GRANTED**")) Defendants based their appellate motion for sanctions on the frivolousness of Connor's entire appeal, not on the delay associated with her filing a motion for panel rehearing (Defs.' App. Mot. Sanctions, Dkt. 50, Ex. U, at 2 ("[T]he current appeal is frivolous on its face in that Appellant makes the same arguments that have been previously rejected by the trial court and this honorable Court"). Throughout the motion, Defendants specifically argued for sanctions pursuant to Rule 38, cited cases pertaining to frivolous appeals within the purview of Rule 38, and sought relief pursuant to Rule 38. (See *id.* ("Sanctions under Rule 38 are appropriate"), *id.* (citing cases pertaining to sanctions imposed pursuant to Rule

38), *id* at 6 ("For the foregoing reasons, this Court should find that Appellant's arguments are frivolous, that sanctions under Fed R App P 38 are warranted, that Appellees have incurred attorneys' fees and expenses as a result of Appellant's frivolous litigation ") Even Connor concedes that the appellate motion "largely" "requests sanctions and damages pursuant to Rule of Appellate Procedure 38, and only requests relief under 28 U S C § 1912 on the final page " (Resp , Dkt 61, at

7) Thus, granting Defendants' motion *was* a finding that Connor's appeal was frivolous

Connor's textual argument is therefore unavailing While the Court of Appeals' order does "remand this case to the district court to determine the amount of costs and damages to be paid to appellees, as provided by 28 U S C § 1912," courts often use Rule 38 and 28 U S C § 1912 interchangeably when the appeal is frivolous and resulted in delay *Exhibitors Poster Exch, Inc v Nat'l Screen Serv. Corp.*, 78 F R D 192, 195 (E D La 1978) ("Various courts have referred to and utilized F R A P 38 and 28 U S C § 1912 interchangeably", *see also Exhibitors Poster Exch, Inc. v. Nat'l Screen Serv Corp.*, 543 F 2d 1106, 1107 (5th Cir 1976) ("The appellees have filed in this Court a motion for damages for frivolous appeal under Rule 38, F R A P The motion is well taken We remand this case to the district court to determine the amount of costs and damages to be paid to the appellees, as provided by 28 U S C. § 1912 "); *Olympia Co. v Celotex Corp.*, 771 F 2d 888, 892-93 (5th Cir 1985) (noting that an award of damages and double costs for the filing of a frivolous appeal "may be made against an appellant under 28 U S C. § 1912 and Fed R App P 38 ") This is especially so when the appeal has resulted in delay, indeed, the only reason to distinguish between the statutory basis for sanctions and the rule would be if the Court of Appeals intended to award sanctions for a frivolous appeal without making a finding that the appeal resulted in delay *See* Fed R App P 38 advisory committee's note to 1967 adoption

Finally, in citing to § 1912, the Court of Appeals did not limit the scope of sanctions to the delay associated with Connor's filing of a motion for panel rehearing, as she contends Nothing in

Defendants' motion for appellate sanctions, which the Court of Appeals granted, limits the requested relief to the delay associated with one portion of Connor's appeal and nothing in the Court of Appeals' order imposes such a limitation either (*See* Defs' Mot App Sanctions, Dkt 50, Ex. U, 5th Cir Order, Dkt 49, at 1-2) For nearly a year, Connor prosecuted a meritless appeal with no legitimate prospect of success After filing her Notice of Appeal, (Dkt 44), she ignored the transcript order deadline, (Dkt 50, Ex A), waited six days after the Clerk sent her an email about missing the deadline to request more time, (*id.* at Ex C), delayed ordering the transcript again, (*id.* at Ex D), moved for a fifteen-day extension to file her appellate brief, (Dkt 50, Ex F), and then filed for another extension the day before her brief was due, (Dkt 50 at Ex G) When the Court of Appeals denied Connor's motion for an extension, (Dkt 50 at Ex I), Connor filed a motion to reconsider arguing that "in seventeen years of practice, she had never personally been denied an extension of time to file an opening brief " (Dkt 50, Ex J) The Court of Appeals denied her motion and dismissed her appeal for want of prosecution shortly after (Dkt 50, Ex K, L) Then, Connor filed two additional motions, which the Court of Appeals took no action on because it had dismissed her appeal (Mot Attorneys' Fees, Dkt 50, at 4) Connor then filed a motion to reopen the appeal (Dkt 50, Ex O)

The Court of Appeals granted her motion and reinstated her appeal (Dkt 50, Ex Q) After considering Connor's arguments on appeal, the Court of Appeals then affirmed this Court's order without an opinion (Dkt 50, Ex S) In an attempt to further prolong meritless litigation, Connor filed a petition for panel rehearing (Dkt 50, Ex T) At this point, after almost a year of investing time and resources into defending against Connor's various delay tactics, Defendants filed a motion for appellate sanctions, which the Court of Appeals granted. (Dkt 50, Ex. U)

Because Connor's frivolous appeal resulted in nearly a year of delay, the Court of Appeals remanded to the District Court for a determination of costs and damages pursuant to § 1912. *See*

Fed R. App P 38 advisory committee's note (explaining that Rule 38 and § 1912 can be used interchangeably, the only difference being that § 1912 requires a showing of delay) And the appellate record makes clear that Connor delayed prompt adjudication of this dispute throughout the entire appeal

Finding no reason to limit the scope of sanctions to the attorneys' fees and costs associated with Connor's motion for panel rehearing, the Court will assess against Connor the attorneys' fees and costs incurred by Defendants in defending against the entire frivolous appeal.

1. Attorneys' Fees

Defendants contend that from October 1, 2018 (the date Connor filed her Notice of Appeal) through June 21, 2019 (the date the Court of Appeals issued its mandate) they incurred \$13,636.50 in reasonable and necessary attorneys' fees and \$276.27 in expenses defending against Connor's frivolous appeal (Mot Sanctions, Dkt 59, at 5) As supporting documentation, Defendants submit an affidavit from Defendants' counsel of record and detailed billing records (Tschirhart, Dkt 59-2, at 1-2, Invoices, Dkt 59-3, at 1-18) Defendants' request for attorneys' fees is based on the following rates: \$195 (later \$210) per hour for Partners, \$175 (later \$180) per hour for Senior Associates, and \$75 (later \$85) for paralegal time (Tschirhart Aff, Dkt 59-2, at 1) Defendants' memorandum notes that these fees "are based upon a bargained-for agreement" and represent "the same fees commonly charged for this kind of work by our Firm all over the State of Texas" (Defs' Fee Calculation Memo, Dkt 59-4, at 2)

The Court finds that the attorneys' fees requested are reasonable in light of the well-known *Johnson* factors.² *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989). In defending against Connor's appeal, Defendants' counsel spent nearly a year reviewing and drafting responses to Connor's various requests for extensions of time and other obstinate efforts to deny Defendants a prompt resolution of the dispute (*See e.g.* Invoice, Dkt. 59-3, at 8-17). Upon examining Defendants' detailed records, the Court finds the time and labor documented to be reasonable in light of the issues involved and the skill required. *See id.* Moreover, the fees charged for the services are consistent with fees charged for such services in the geographic area amongst lawyers with similar experience, reputation, and ability. *See id.* Finally, Connor has not challenged the requested rates and fees; her response to Defendants' attorney's fees motion only contests compliance with W.D. Tex. Loc. R. CV-7(j) and the scope of the Court of Appeals' mandate.³ While she proffers her own attorneys' fee offer—\$525.00—she does not explain why Defendants' requested rates and fees, supported by invoices, affidavits, and memorandum, are unreasonable. Thus, the Court concludes that Defendants are entitled to the \$13,636.50 in requested attorneys' fees and \$276.27 in requested expenses.

² The *Johnson* factors are (1) the time and labor required to represent the client or clients, (2) the novelty and difficulty of the issues in the case, (3) the skill required to perform the legal services properly, (4) the preclusion of other employment by the attorney, (5) the customary fee charged for those services in the relevant community, (6) whether the fee is fixed or contingent, (7) the time limitations imposed by the client or circumstances, (8) the amount involved and results obtained, (9) the experience, reputation, and ability of the attorney, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989).

³ While Connor objected to one billing entry when the parties met to confer, Defendants "adjusted that particular entry, in response to [Connor's] objection, by reducing it accordingly," (Defs.' Reply, Dkt. 63, at 4), and Connor's Response in Opposition to Defendants' Motion for Attorneys' Fees and Costs, (Dkt. 61), does not raise objections with respect to the requested rates and fees, only to the manner in which these rates and fees were discussed. *See* Pl.'s Resp., Dkt. 61, at 3-4 (objecting to Defendants' "global request for \$40,000" as noncompliant with the meet and confer requirements under W.D. Tex. Loc. R. CV-7(j), but raising no other specific objections to the rates and fees incurred).

n. Costs

The Court of Appeals also remanded this case for a determination of costs (*See* Fifth Cir. Mandate, Dkt 49, at 1) "Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs" 28 U.S.C. § 1912. Federal Rule of Appellate Procedure 38 likewise allows for "just damages and single and double costs to the appellee" when an appeal is frivolous. *Garza v. Westergren*, 908 F.2d 27, 29 (5th Cir. 1990) ("[A]n award of attorney's fees and double costs pursuant to Federal Rule of Appellate Procedure 38 is proper, because this appeal is frivolous.") Defendants submitted a Bill of Costs to the Court of Appeals in the amount of \$29.40 in taxable costs, (Bill of Costs, Dkt 50, Ex. W, at 166), and ask the Court to award double costs in the amount of \$58.00 (Mot. Att'y Fees, Dkt 59, at 3-5).

The Court concludes that this case is a textbook example of a scenario where double costs are warranted. Here, Connor's appeal was not only frivolous, but also resulted in significant delay. For nearly a year, Connor prolonged unmentionous litigation, with no legitimate prospect of success. In continuing to litigate a meritless appeal and leaving no delay tactic unturned, Connor "imposed an unnecessary burden on [the Court of Appeals] and has infringed on the rights of the appellees who are entitled to a prompt adjudication of this dispute." *Haggerty v. Succession of Clement*, 749 F.2d 217, 222 (5th Cir. 1984). Accordingly, the Court determines that Defendants' request for double costs in the amount of \$58.00 is warranted (*See* Dkt 59, at 5).

B. Motion for Additional Sanctions

In response to this Court's order, (Dkt 56), Defendants filed a motion requesting additional sanctions in the form of "all of the attorneys' fees and costs incurred by Defendants in the proceedings before this honorable court" (Mot. Add. Sanctions, Dkt 60, at 2). In the alternative, Defendants ask the Court to sanction Connor by "entering an Order temporarily disbar[ri]ng [her]

from the practice of law before the Courts in the Western District of Texas for a period of not less than six (6) months" (*Id.* at 2-3). Ultimately, Defendants just want the Court to "fashion a sanction that would deter [Connor] from continuing to use the [c]ourts as a weapon of harassment against them and those who are connected with them." (*Id.* at 2). Defendants provide two possible bases for additional sanctions. First, Defendants contend that Connor, a licensed attorney, could be sanctioned pursuant to 28 U.S.C. § 1927. Second, Defendants contend the Court can sanction Connor pursuant to its inherent authority.

Connor argues that this Court lacks the authority to issue additional sanctions because the Court of Appeals' remand order only allows for an assessment of fees for delay under 28 U.S.C. § 1912, which Connor isolates to fees accrued by the Defendants after she filed a motion for panel rehearing (Pl.'s Resp., Dkt. 62, at 2). She argues that on remand a trial court cannot deviate from the mandate of the appellate court and that the Court of Appeals' mandate requires this Court to assess fees only for delay under 28 U.S.C. § 1912 (*Id.*).

As previously discussed, the Court finds nothing in the text of the Court of Appeals' remand order that limits sanctions to the delay associated with Connor's motion for panel rehearing. *See infra* Part II A 2. Moreover, the Court of Appeals' mandate covers appellate sanctions and says nothing about this Court's power to sanction Connor for her unreasonable and vexatious conduct before this Court. Because the pre-filing injunction imposed by this Court, (Order, Dkt. 42, at 9), has not deterred Connor from continuing to harass Defendants with unmentionous litigation—both in this Court and others—the Court will assess additional monetary sanctions against Connor.

1 Sanctions pursuant to 28 U.S.C. § 1927

Under 28 U.S.C. § 1927, "[a]ny attorney who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." To impose sanctions

pursuant to this provision, the conduct multiplying the proceedings must be both "unreasonable" and "vexatious." *Morrison v Walker*, 939 F 3d 633, 637–38 (5th Cir 2019) "Conduct is 'unreasonable and vexatious' if there is evidence of the 'persistent prosecution of a meritless claim' and of a 'reckless disregard of the duty owed to the court.'" *Id.* "An attorney acts with 'reckless disregard' of [her] duty to the court when [s]he, without reasonable inquiry, advances a baseless claim despite clear evidence undermining [her] factual contentions." *Id.* at 638

In support of § 1927 sanctions, district courts often rely on "repeated filings despite warnings from the court, or other proof of excessive litigiousness, to support imposing sanctions." *Procter & Gamble Co v Amway Corp.*, 280 F 3d 519, 525 (5th Cir 2002) Before imposing such sanctions, the court must "make detailed factual findings," including "(1) identifying the sanctionable conduct as distinct from the case's merits, (2) linking the sanctionable conduct and the sanction's size, and (3) identifying the legal basis for each sanction." *Morrison*, 939 F 3d at 638 "To shift the entire cost of defense, the claimant must prove, by clear and convincing evidence, that *every fact* of the litigation was patently meritless, and counsel must have lacked a reason to file the suit and must wrongfully have persisted in its prosecution through discovery, pre-trial motions, and trial." *Procter & Gamble Co.*, 280 F 3d at 526 (emphasis in original)

For the reasons stated below, the Court concludes that Connor's conduct in filing and persistently litigating this lawsuit unreasonably and vexatiously multiplied the proceedings against Defendants and sanctions are thus warranted under § 1927

1. Reasonableness

This is Connor's third, meritless First Amendment retaliation lawsuit before this Court. In bringing this latest lawsuit, Connor knew that this Court had twice dismissed—and the Court of Appeals had previously affirmed dismissal of—Connor's nearly identical claims. See *McIntyre v. Castro*, No. 1:15-CV-1100 RP, 2016 WL 1714919, at *4 (W.D. Tex. Apr. 8, 2016), *aff'd*, 670 F. App'x 250

(5th Cir 2016), *reh'g denied* (Dec 9, 2016) ("*McIntyre I*"), *McIntyre v. Castro*, No. 1:16-CV-490 RP, 2017 WL 1483572, at *3 (W.D. Tex. Apr. 25, 2017), *aff'd in part sub nom. Connor v. Castro*, 719 F. App'x 376 (5th Cir. 2018) ("*McIntyre II*"). By filing this third lawsuit, Connor persistently prosecuted a mendacious claim and thus unreasonably multiplied proceedings that should have concluded with the resolution of *McIntyre I*.

ii. Vexatiousness

To impose sanctions pursuant to § 1927, counsel's multiplication of proceedings must be not only unreasonable, but also vexatious. *See Morrison*, 939 F.3d at 637–38. The Court concludes that Connor vexatiously multiplied the proceedings in reckless disregard of the duty owed to this Court. *See id.* This Court's dismissal of *McIntyre I* put Connor on notice that claims for First Amendment retaliation based on a benign litigation status update were mendacious. *See McIntyre I*, 2016 WL 1714919, at *4. *McIntyre II* did not remedy these deficiencies and this Court admonished Connor's decision to continue to assert a claim nearly identical to the one previously dismissed, questioned her motivation, and warned of possible future sanctions if she continued to exhibit conduct that "falls short of what this Court expects of its officers." *McIntyre II*, 2017 WL 1483572, at *6. Connor was not deterred. Instead, she filed a nearly identical lawsuit, indifferent to this Court's warnings (Compl., Dkt. 1). In light of the record as a whole, the Court concludes that Connor pursued this third lawsuit in bad faith and for the improper purpose of harassing and annoying Defendants. Such conduct constitutes a reckless disregard of the duty owed to this Court.

As noted in this Court's previous order, "Connor's extensive and mendacious litigation history against Defendants and other Lost Creek directors indicates a commitment to use the courts as a weapon of harassment against them" (Order, Dkt. 42, at 8–9). Despite this Court's two prior dismissals of nearly identical First Amendment retaliation claims against Defendants, she filed a third lawsuit alleging First Amendment retaliation on the basis of the same benign litigation update.

See McIntyre v. Castro, No 1-15-CV-1100 RP, 2016 WL 1714919, at *4 (W D Tex Apr 8, 2016), *aff'd*, 670 F App'x 250 (5th Cir 2016), *reh'g denied* (Dec. 9, 2016) ("*McIntyre I*"), *McIntyre v. Castro*, No 1 16-CV-490 RP, 2017 WL 1483572, at *3 (W D Tex Apr 25, 2017), *aff'd in part sub nom Connor v. Castro*, 719 F App'x 376 (5th Cir 2018) ("*McIntyre II*"), *Connor v. Stewart*, No 1 17-CV-827-RP, 2018 WL 2994644, at *1 (W D Tex June 14, 2018), *aff'd*, 770 F App'x 244 (5th Cir 2019) In doing so, she advanced a "baseless claim despite clear evidence undermining her factual contentions," namely, two prior dismissals and an affirmance by the Court of Appeals. *See id.* Throughout the litigation, Connor made claims that were "not merely meritless" but also made in bad faith for the purpose of harassing Defendants. (*See* Order, Dkt. 42, at 7) Given Connor's repeated efforts to advance allegations against Defendants in bad faith at every step of the litigation, shifting the entire burden of defending this lawsuit onto Connor is not only appropriate, but necessary to deter Connor from harassing Defendants with more meritless litigation in the future.

Moreover, the monetary sanctions issued by state courts in similar litigation have not deterred Connor from filing this action, indicating the need for additional monetary sanctions. (*See* Orders, Dkt. 38-2) Even more troubling, Connor recently misrepresented the record in this case in a related state court action, attesting to a state court judge that this Court had dismissed her state law claims, when in fact this Court had merely declined to exercise supplemental jurisdiction over them and remanded them back to Texas state court. (*See* Advisory to the Court, Dkt. 67, at 1-5), *compare McIntyre II*, 2017WL 1483572, at *5 ("In light of the dismissal of Plaintiffs' federal claims, this Court will decline to exercise supplemental jurisdiction. Accordingly, the state law claims against Defendants are properly remanded back to Texas state court.") *with* Connor's Request for Abstract Judgment, Dkt. 67-1, at 1 ("[T]he record clearly indicates that the claims dismissed by the Hon. Karin Crump had already been dismissed by the Western District of Texas, and therefore, the order is subject to collateral attack and injunctive relief") As this Court has already admonished, "Connor

has the legal training and experience to understand that the state-law portion of Defendants' motion was not adjudicated by this Court, which remanded Connor's state-law claims" (Dkt 31 at 7). Therefore, Defendants' requested sanctions are also appropriate to deter Connor from misrepresenting this Court's record for the purpose of harassing defendants in an alternate forum.

Finally, Connor's frivolous filings have needlessly diverted this Court's time and resources away from the hundreds of meritorious cases and controversies on its docket (*See* Order, Dkt 42, at 8 (discussing the burden that Connor's high volume of motions in this action and previous actions have had on this Court)). Thus, in continuing to prosecute her claims in bad faith, Connor not only saddled Defendants with the burden of defending against frivolous claims, but she also impeded this Court's ability to direct its attention to the meritorious plaintiffs on its docket in need of relief. Connor has imposed a similar burden on the Texas state court system. *See id.* (discussing the burden Connor's litigation tactics have placed on the state court system, particularly the five-hundred-page state court record in *McIntyre II*). Repeated admonitions and the threat of sanctions both by this Court and the Court of Appeals have not deterred Connor from continuing to litigate in bad faith. *McIntyre II*, 2017 WL 1483572, at *6 ("In short, the Court is troubled by Connor's conduct in this litigation the Court will not impose sanctions at this time, should similar concerns arise if this matter is again before this Court, the Court will not hesitate to consider sanctions—whether on motion or on its own initiative"), (*see also* Fifth Cir. Mandate, Dkt 49, at 2 ("[A]ppellant, a lawyer representing herself pro se, is cautioned that any further prolongation of this case will likely result in additional sanctions"). The Court concludes that severe monetary sanctions are necessary to send the message to Connor that bad faith litigation brought for the purpose of harassment will not be tolerated, especially by an officer of the Court. Thus, this Court will assess the full cost of defending this suit against Connor.

In defending against Connor's baseless claims before this Court, Defendants incurred a total of \$28,646.50 in reasonable and necessary attorneys' fees and \$435.98 in expenses (Mot. Add Sanctions, Dkt. 60, at 6). In reviewing the submitted invoices, affidavit, and memorandum in support of this figure, the Court determines that both the work expended and the rates assessed are reasonable for the geographic area. Because Connor has not disputed the reasonableness of these sums and because the record demonstrates that "every facet" of Connor's third lawsuit was "patently meritless" and brought in bad faith for the improper purpose of harassing Defendants, (*see* Order, Dkt. 42, at 4-9), the Court concludes shifting the entire cost of the defense to Connor is appropriate pursuant to 28 U.S.C. § 1927.⁴ *See Procter & Gamble Co.*, 280 F.3d at 526. In addition to these monetary sanctions, the Court reminds Connor that a pre-filing injunction remains in place

Connor may not file a civil action against Defendants or other officers of the Lost Creek Municipal Utility District, directly or indirectly, in the Western District of Texas without receiving written leave from a federal district judge for this district. Any future complaint against Defendants or other officers of the Lost Creek Municipal Utility District in this district shall be accompanied by a motion for leave, and no summons shall issue unless leave is granted.

(Dkt. 42 at 9)

To echo the Court of Appeals, "[t]his case is over."

III. CONCLUSION

Accordingly, **IT IS ORDERED** that Defendants' Motion for Attorneys' Fees and Costs, (Dkt. 59), is **GRANTED**.


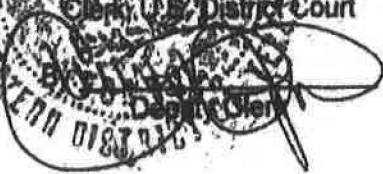
⁴ To the extent Connor's conduct is not covered by one of the other sanctioning provisions, this Court relies on its inherent power to impose attorneys' fees as a sanction for bad-faith conduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991) ("There is, therefore, nothing in the other sanctioning mechanisms or prior cases interpreting them that warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct. This is plainly the case where the conduct at issue is not covered by one of the other sanctioning provisions. But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules.")

IT IS FURTHER ORDERED that Defendants' Motion for Additional Sanctions, (Dkt 60),
is **GRANTED**

Defendants are entitled to an award of **\$13,636.50 in attorneys' fees, \$276.27 in expenses, and double costs in the amount of \$58.00** for the damages incurred in defending against Connor's frivolous appeal

Defendants are further entitled to **\$28,646.50 attorneys' fees and \$435.98 in expenses** incurred in defending this matter before this Court

SIGNED on January 27, 2020


ROBERT PITMAN
UNITED STATES DISTRICT JUDGE
A true copy of the original, I certify.
Clerk, U.S. District Court


Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded

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**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**



Dana DeBeauvoir, County Clerk
Travis County, Texas

Feb 10, 2020 02:09 PM

Fee: \$106.00

WELLINB

2020 - Values not available

Account

Property ID: 108378 Legal Description: LOT 14 BLK 4 LOST CREEK SEC 1
 Geographic ID: 0109280314 Zoning:
 Type: Real Agent Code:
 Property Use Code:
 Property Use Description:

Protest

Protest Status:
 Informal Date:
 Formal Date:

Location

Address: 6203 OLYMPIC OVERLOOK Mapsc: AUSTIN, TX 78746
 Neighborhood: N5200 Map ID: 011037
 Neighborhood CD: N5200

Owner

Name: CONNOR MADELEINE B Owner ID: 1739050
 Mailing Address: 6703 OLYMPIC OVERLOOK % Ownership: 100.0000000000%
 AUSTIN TX 78746 7229
 Exemptions: HS

(+) Improvement Homesite Value: + N/A
 (+) Improvement Non-Homesite Value: + N/A
 (+) Land Homesite Value: + N/A
 (+) Land Non-Homesite Value: + N/A Ag / Timber Use Value
 (+) Agricultural Market Valuation: + N/A N/A
 (+) Timber Market Valuation: + N/A N/A

(=) Market Value: = N/A
 (-) Ag or Timber Use Value Reduction: - N/A

(-) Appraised Value: = N/A
 (-) HS Cap: - N/A

(=) Assessed Value: = N/A

Owner: CONNOR MADELEINE B
 % Ownership: 100.0000000000%

Total Value: N/A

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
02	CITY OF AUSTIN	N/A	N/A	N/A	N/A
03	TRAVIS COUNTY	N/A	N/A	N/A	N/A
08	EANES ISD	N/A	N/A	N/A	N/A
0A	TRAVIS CENTRAL APP DIST	N/A	N/A	N/A	N/A
21	TRAVIS COUNTY HEALTHCARE DISTRICT	N/A	N/A	N/A	N/A
68	AUSTIN COMM COLL DIST	N/A	N/A	N/A	N/A
6P	LOST CREEK LIMITED DISTRICT	N/A	N/A	N/A	N/A
	Total Tax Rate	N/A			

Taxes w/Current Exemptions: N/A

Taxes w/o Exemptions: N/A

Improvement #1: TEAM DWELLING State Code: 48 Living Area: 2022 0 sqft Value: 1,100

Type	Description	Class CD	Exterior Wall	Year Built	SQFT
41	1st Floor	WW 1		1976	1239.0
41	2nd Floor	WW 2		1976	623.0
41	PORCH DECK ETC	WW 3		1976	210.0
41	GARAGE ATT 1ST F	WW 4		1976	371.0
41	FRONT ELEVATION	WW 5		1976	252.0
41	BATHROOM	WW 6		1976	10
41	POOL ENCLOSURE	WW 7		1976	110.0
527	CONTRACT	WW 8		1976	10
527	REPAIRS	WW 9		1976	4.0

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	LAND	Land	0.3076	13400.00	0.00	0.00	N/A	N/A

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2020	N/A	N/A	N/A	N/A	N/A	N/A
2019	\$261,000	\$420,000	0	681,000	\$100	\$680,900
2018	\$199,000	\$420,000	0	619,000	\$0	\$619,000
2017	\$260,000	\$360,000	0	620,000	\$0	\$620,000
2016	\$435,374	\$210,000	0	645,374	\$11,677	\$633,697
2015	\$449,122	\$180,000	0	629,122	\$53,034	\$576,088

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	10/3/2017	WD	WARRANTY DEED	VANWISSE DEWITT	CONNOR MADELEINE B			2017160495
2	3/1/2013	WD	WARRANTY DEED	NCM ACQUISITIONS LLC	VANWISSE DEWITT			2013037759TR
3	12/4/2012	MS	MISCELLANEOUS	BAE KUM YEO	NCM			2012209519TR

2/28/2020

Travis CAD - Property Details

& KYEONG J
ACQUISITIONS
LLC

2020 - Values not available

Account

Property ID: 111538 Legal Description: LOT 5 BLK 7 LOST CREEK SEC 2
 Geographic ID: 0111280117 Zoning:
 Type: Real Agent Code:
 Property Use Code:
 Property Use Description:

Protest

Protest Status:
 Informal Date:
 Formal Date:

Location

Address: 6304 WHITEMARSH VLY WALK Mapsc: TX 78746
 Neighborhood: N5200 Map ID: 011037
 Neighborhood ED: N5200

Owner

Name: CONNOR MADELINE G Owner ID: 1485600
 Mailing Address: 6203 OLYMPIC OVERLOOK % Ownership: 100.000000000000
 AUSTIN, TX 78746-7229

Exemptions:

(+) Improvement Homesite Value	+	N/A	
(+) Improvement Non-Homesite Value:	+	N/A	
(+) Land Homesite Value:	+	N/A	
(+) Land Non Homesite Value:	+	N/A	Ag / Timber Use Value
(+) Agricultural Market Valuation	+	N/A	N/A
(+) Timber Market Valuation:	+	N/A	N/A

(=) Market Value:	=	N/A
(-) Ag or Timber Use Value Reduction:	-	N/A

(-) Appraised Value:	=	N/A
(-) HS Cap:	-	N/A

(=) Assessed Value	=	N/A
--------------------	---	-----

Owner: CONNOR MADELINE G
 % Ownership: 100.000000000000

Total Value: N/A

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
02	CITY OF AUSTIN	N/A	N/A	N/A	N/A
03	TRAVIS COUNTY	N/A	N/A	N/A	N/A
08	EANES ISD	N/A	N/A	N/A	N/A
0A	TRAVIS CENTRAL APP DIST	N/A	N/A	N/A	N/A
21	TRAVIS COUNTY HEALTHCARE DISTRICT	N/A	N/A	N/A	N/A
68	AUSTIN COMM COLL DIST	N/A	N/A	N/A	N/A
6P	LOST CREEK LIMITED DISTRICT	N/A	N/A	N/A	N/A
Total Tax Rate:		N/A			

Taxes w/Current Exemptions: N/A

Taxes w/o Exemptions: N/A

Improvement #1: 1 FARM DWELLING State Code: 41 Living Area: 2152.0 sqft Value: N/A

Type	Description	Class CD	Exterior Wall	Year Built	SQFT
11	1st Floor	WW		1981	2152.0
11	PORCH COVERED	WW		1981	28.0
11	GARAGE ATTACHED	WW		1981	374.0
11	HVAC RESIDENTIAL			1981	2152.0
11	BATHROOM			1981	2.0
12	DECK UNCOVERED			1981	133.0
12	DECK UNCOVERED			1981	70.0
22	FIREPLACE			1981	1.0
11	MASTONK TRIM	AW		1981	405.0
112	TERRACE UNCOVERED			1981	130.0
112	DECK UNCOVERED			1981	223.0
112	DECK UNCOVERED			1981	70.0

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	LAND	Land	0.3595	15660.00	116.00	135.00	N/A	N/A

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2020	N/A	N/A	N/A	N/A	N/A	N/A
2019	\$210,200	\$367,500	0	\$77,700	50	\$577,700
2018	\$238,597	\$367,500	0	\$66,097	50	\$606,097
2017	\$281,174	\$283,500	0	\$64,674	\$225,996	\$338,678
2016	\$331,818	\$165,375	0	\$97,193	\$189,304	\$307,889
2015	\$342,296	\$141,750	0	\$84,046	\$204,147	\$279,899

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	10/26/2007	DV	DIVORCE	CONNOR CABRACH I &	CONNOR MADELINE G			DV#D-1-FM-06-003296

2/26/2020

Travis CAD - Property Details

2	8/2/2002	WD	WARRANTY DEED	MADELEINE G ORTMAN THOMAS E	CONNOR CABRACH J & MADELEINE G	00000	00000	2002143357TR
1	3/15/1989	AD	ASSUMPTION DEED	ORTMAN THOMAS E & DANIEL ORTMA	ORTMAN THOMAS E	10942	00027	

Exhibit “B”

ELVA L. PRICE

District Clerk, Travis County

P.O. Box 679003

Austin, Texas 78767-9003

2-854-9457



RECEIPT No. 00303

Date:

08/28/2020

Amount:

30,000

Payment Type:

Cash [] Check ☒ M.O. [] Credit []

CASH : Amount of change returned _____

CHECK or M.O. #: 9230820220

Check or M.O.

D/L # _____

Information:

D.O.B. _____

Phone # _____

CREDIT CARD REF. # _____

Received From:

Madeleine B. COMNER

Case No.:

D-1- GN-15-003714

Received For:

Passport [] Photo [] Other ☒

For:

Supervision Bond

Received By

Deputy District Clerk:

Jandy Capelo

Exhibit “C”

> Legals (/tx/legals/search)

NOTICE OF SALE OF REAL ESTATE- COUNTY OF TRAVIS-STATE OF TEXAS

By virtue of a certain WRIT OF EXECUTION issued by the 419TH DISTRICT COURT of Travis County, Texas, on the 24TH day of JUNE, 2020 in certain causes numbered D-1-GN-15-003714 and 1:17-CV-00827, respectively, wherein ERIC CASTRO AND NANCY NAEVE AND GARY SERTICH AND LEAH STEWART AND CHARLES MCCORMICK is Defendant and DAVID MCINTYRE AND MADELEINE CONNOR is Plaintiff, found in favor of said Defendant for the sum of: - For cause numbered D-1-GN-15-003714: TWO THOUSAND ONE HUNDRED TWENTY FOUR AND 00/100 DOLLARS (\$2,124.00) PLUS \$76.67 IN COSTS, \$500.00 IN SANCTIONS, \$15,000.00 IN ATTORNEY'S FEES FOR THE UNSUCCESSFUL APPEAL IN THE THIRTEENTH COURT OF APPEALS, \$20.00 IN COSTS FOR THE THIRTEENTH COURT OF APPEALS COSTS, \$10,000.00 FOR THE TEXAS SUPREME COURT COSTS ON AN ORDER GRANTING DEFENDANT'S MOTION TO DISMISS - AND, For cause numbered 1:17-CV-00827: THIRTEEN THOUSAND SIX HUNDRED THIRTY SIX 50/100 DOLLARS (\$13,636.50) IN ATTORNEY'S FEES FOR APPEAL, \$276.27, \$58.00 IN DOUBLE COSTS IN APPEAL COSTS, \$28,646.50 IN ATTORNEY'S FEES FOR DISTRICT LAWSUIT (SANCTIONS), \$435.98 IN COSTS FOR DISTRICT LAWSUIT (SANCTIONS) - That being the amount of the judgment recovered by said Plaintiff, in the 419th District Court of Travis County, Texas on the 23th day of JUNE, 2017, and the United States District Court for the Western District of Texas Austin Division, Texas, on the 27th day of JANUARY, 2020, respectively. - I, DEPUTY JUAN ARISPE #327 on the 29TH day of JULY, 2020 have levied upon, and will on the 1ST day of SEPTEMBER, 2020 between the hours of 10:00 a.m. and 4:00 p.m. on said day, at the courthouse steps of said county, offer for sale at public auction for cash to the highest bidder, all the right, title and interest of Defendant in and to the following described property, levied upon as the property of Defendant, to wit: - LOT 5 BLK 7 LOST CREEK SEC 2; - COMMONLY KNOWN AS 6304 WHITEMARSH VLY WALK, AUSTIN, TEXAS 78746 - Note: On the property sold there are no warranties, expressed or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. You have bought the property "as is". Buyers are further advised that the purchase of the property at the Constable's sale may not extinguish any liens or security interest on or in the property. You have simply purchased whatever interest the defendant had in the property. If you have any questions, you should consult the counsel of your choice. - The purchaser will be required to produce an unexpired written statement from the Tax-assessor-collector of the County in which the sale is conducted that there are no delinquent ad valorem taxes owed to the county, school district or municipality. - The above sale to be made by me to satisfy the above-described judgment for: - Cause numbered D-1-GN-15-003714: TWO THOUSAND ONE HUNDRED TWENTY FOUR AND 00/100 DOLLARS

Exhibit “D”

DAVID McINTYRE, et al.,	§	IN THE DISTRICT COURT
Plaintiffs	§	
vs.	§	
	§	419TH JUDICIAL DISTRICT OF
ERIC CASTRO, et al.,	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

MOTION FOR STAY OF EXECUTION

TO THE HONORABLE SENIOR DISTRICT JUDGE W.C. KIRKENDALL:

COMES NOW, Plaintiff and Madeleine Connor, and files this her request for a stay of the writ of execution issued in this case.

On August 27, 2020, Plaintiff first became aware of a notice of sale of her non-exempt real property located at 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas, 78746. On the same day, August 27, 2020, the District Clerk file-stamped a supersedeas bond,¹ and on the following day, accepted a cash payment of \$30,000.00 for issuance of the bond.²

The unserved notice of sale indicates that Connor's non-exempt real property described above will be sold at auction on September 1, 2020.³

Connor immediately took action to avoid the sale by requesting that the Travis County District Clerk accept her supersedeas to satisfy immediately the judgment, which the Clerk did. Connor also filed a request that the Court make findings under Tex. Prop. Code § 51.0011 and filed it with the clerk. Connor's lead counsel, Mr. David Rogers, also filed an endorsement and ratification of the motion and supersedeas filed and tendered by Ms. Connor.

Although Connor still maintains various irregularities exist, and intends to exercise those legal remedies to overturn the judgment and the Abstract of Judgment rendered by the Travis

¹ Exhibit A, Supersedeas Bond file-stamped September 27, 2020

² Exhibit B, Receipt for cash payment of \$30,000.00 for issuance of the bond

³ Exhibit C, Notice of Sale of 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas, 78746.

County District Clerk and issuance of the writ of execution upon which the sale of the property purportedly rests, Connor files this request for stay of execution by emergency hearing or submission to halt the execution on her real property located at 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas 78746, on September 1, 2020.

PRAYER

Plaintiff prays that the Court grant Plaintiff's request for a stay of execution sufficient to avoid a sale of her real property located at 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas 78746, on September 1, 2020. Connor prays for general relief.

Respectfully submitted,

/s/ David Rogers

David Rogers

State Bar No. 24014089

Firm@DARogersLaw.com

LAW OFFICE OF DAVID ROGERS

595 Round Rock West Drive, Suite #102

Round Rock, Texas 78681

Phone: (512) 923-1836

Fax: (512) 685-1144

Attorney for Madeleine Connor

Exhibits

Exhibit A, Supersedeas Bond file-stamped September 27, 2020

Exhibit B, Receipt for cash payment of \$30,000.00 for issuance of the bond

Exhibit C, Notice of Sale of 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas, 78746.

[Remainder of Page intentionally Left Blank]

CERTIFICATE OF SERVICE

I certify that this instrument was served on the following persons on the 31st day of August, 2020: Lowell Denton and Scott M. Tschirhart, in accordance with Rule 21a, Texas Rules of Civil Procedure.

SCOTT M. TSCHIRHART

State Bar No. 24013655

Scott.Tschirhart@rampage-aus.com

SMTschirhart@rampagelaw.com

LOWELL F. DENTON

State Bar No. 05764700

lowell.denton@rampage-sa.com

LFDenton@rampagelaw.com

DENTON NAVARRO ROCHA BERNAL & ZECH

2517 N. Main Avenue

San Antonio, Texas 78212

(210) 227-3243

(210) 225-4481 Facsimile

ATTORNEYS FOR SUBROGEE

TEXAS MUNICIPAL LEAGUE

INTERGOVERNMENTAL RISK POOL

/s/ David Rogers

David Rogers

Attorney for Madeleine Connor

No. D-1-GN-15-003714

**DAVID McINTYRE, et al.,
Plaintiffs**

vs.

**ERIC CASTRO, et al.,
Defendants.**

§
§
§
§
§
§

IN THE DISTRICT COURT

419TH JUDICIAL DISTRICT OF

TRAVIS COUNTY, TEXAS

STAY OF EXECUTION

Before the Court on emergency hearing, is Madeleine Connor's Application for a Stay of Execution.

The Court grants the stay, as she has posted security to suspend execution of the Final Judgment in the amount of \$30,000.

Accordingly, the execution of the judgment by writ, and/or enforcement and sale of Madeleine Connor's property located at 6304 Whitmarsh Valley Walk, Travis County, Austin, Texas 78746, is hereby STAYED.

The Court further orders that delivery of this Order to the Travis County Constable Precinct #3 by email or other means shall be sufficient notice to effectuate this stay of execution.

Signed this _____ day of _____, 2020

The Honorable Senior District Judge W.C. Kirkendall

Exhibit “A”

AUG 27 2020 DF

At 1:23 P.M.
Velve L. Price, District Clerk

No. D-1-GN-15-003714

DAVID McINTYRE, et al.,
Plaintiffs

vs.

ERIC CASTRO, et al.,
Defendants.

§
§
§
§
§
§

IN THE DISTRICT COURT

419TH JUDICIAL DISTRICT OF

TRAVIS COUNTY, TEXAS

SUPERSEDEAS

COMES NOW, Plaintiff Madeleine Connor, and files this her Supersedeas.

Pursuant to Texas Rule of Appellate Procedure 24 and Civil Practice & Remedies Code Chapter 52, Plaintiff Madeleine Connor, herewith files this deposit in lieu of bond.

1. The Western District of Texas signed an order on January 27, 2020, in cause number 1:17-cv-00827-RP [Dkt. 70];
2. The Defendants recorded the order referenced above on February 10, 2020;
3. On February 26, 2020, Plaintiff filed a notice of appeal to the order, which was an award of attorney's fees and sanctions;
4. The trial court's order awarded no compensatory damages or interest thereon; therefore, the amount of supersedeas required is \$ 0. *See In re Corral-Lerma*, 451 S.W.3d 385 (Tex. 2014); *Shook v. Walden*, 304 S.W.3d 910 (Tex. App.—Austin 2010), *overruled on other grounds*, 451 S.W.3d 385 (Tex. 2014);
5. Connor filed a supersedeas on February 26, 2020, but was unable to post a bond before the courthouse closed due to covid, and;
6. This document is resubmitted with the Travis County Clerk, with the sum of thirty-thousand dollars (\$30,000.00), as a deposit in lieu of bond. This amount should be sufficient to supersede all costs and amounts finally determined by appeal. See

attached. Ms. Connor intends to challenge this payment and the abstract of judgment that purports to allow execution on her non-exempt property by collateral attack.

Respectfully submitted,

/s/ Madeleine Connor

Madeleine Connor

SBOT # 24031897

P.O. Box 161962

Austin, Texas 78716-1962

(512) 289-2424

(512) 329-5229 (fax)

mgbconnor@yahoo.com

CERTIFICATE OF SERVICE

I certify that this instrument was served on the following persons on the 27th day of August, 2020: Lowell Denton and Scott M. Tschirhart, at the following email addresses: lowell.denton@rampage-sa.com, Scott.Tschirhart@rampage-aus.com.

/s/ David Rogers

David Rogers

Attorney for Madeleine Connor



San Antonio | Austin | Rio Grande Valley | Texas Gulf Coast
2500 W. William Cannon Drive, Suite 609 | Austin, Texas 78745-5320
V 512-279-6431 | F 512-279-6438

June 5, 2020

Velva L. Price
Travis County District Clerk
P.O. Box 679003
Austin, Texas 78767-9003

E-FILE NOTIFICATION

Re: *In Re David McIntyre*
Cause No. D-1-GN-15-003714, in the 419th Judicial District Court, Travis County, Texas
Request to Writ of Execution

Dear Ms. Price:

Please process this request for re-issuance of a Writ of Execution by the Clerk. The Office of Travis County Constable, Precinct No. 3 was unable to serve the original Writ prior to its expiration as their office was closed due to COVID-19. Therefore, re-issuance is required.

The information below is to be stated on the writ:

CAUSE NO. D-1-GN-15-003714

In re DAVID McINTYRE,	§	IN THE DISTRICT COURT OF
Petitioner,	§	
	§	
	§	419th JUDICIAL DISTRICT
	§	
	§	TRAVIS COUNTY, TEXAS

Attached is a copy of the *Order Granting Defendants' Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code* issued by the Honorable Judge Karin Crump on June 23, 2017 and file-stamped by your office on June 26, 2017. In the Order, Judge Crump awarded the following for the Defendants against Plaintiff Madeleine Connor, (jointly and severally with Plaintiff David McIntyre):

Velva L. Price
Travis County District Clerk
June 5, 2020
2 | Page

Attorney's Fees:	\$ 2,124.00
Costs:	\$ 76.67
Sanctions:	\$ 500.00
Thirteenth Court of Appeals (unsuccessful)	\$15,000.00
Thirteenth Court of Appeals Costs	\$ 20.00
Texas Supreme Court (unsuccessful)	<u>\$10,000.00</u>
TOTAL:	\$27,720.67

Attached is a copy of the filed and recorded Abstract of Judgment for the aforementioned amount.

On January 27, 2020, United States District Judge Robert Pitman issued an Order in Cause No. 1:17-cv-00827; styled *Madeleine Connor v. Leah Stewart, Eric Castro and Chuck McCormick*, in the Western District of Texas-Austin Division. In his Order, Judge Pitman granted Defendants' their attorneys' fees, costs and additional sanctions against Plaintiff. The award is as follows:

Attorney's Fees for Appeal:	\$13,636.50
Costs for Appeal:	\$ 276.27
Double Costs (in Appeal costs)	\$ 58.00
Attorney's Fees for District lawsuit (sanctions):	\$28,646.50
Costs for District lawsuit (sanctions):	<u>\$ 435.98</u>
TOTAL:	\$43,053.25

Attached is copy of the filed and recorded Order (Abstract of Judgment).

Plaintiff Madeleine Connor, individually, owes Texas Municipal League Intergovernmental Risk Pool ("TMLIRP") by and through former Defendants Eric Castro, Nancy Naeve, Gary Sertich, Leah Stewart and Charles McCormick the **total sum of \$70,773.92**.

Creditor to be listed in the Writ of Execution is:

Texas Municipal League Intergovernmental Risk Pool by and through Defendants Eric Castro; Nancy Naeve; Gary Sertich; Leah Stewart; and Charles McCormick, as Subrogee.

Address:
Texas Municipal League Intergovernmental Risk Pool
c/o Denton Navarro Rocha Bernal & Zech, P.C.
2500 W. William Cannon, Suite 609
Austin, Texas 78745

Velva L. Price
Travis County District Clerk
June 5, 2020
3 | Page

Debtor to be listed in the Writ of Execution is:

Madeleine Connor

Mailing Address: P.O. Box 161962

Physical Addresses: 6203 Olympic Overlook, Austin, Texas 78746 and 6304 Whitemarsh Vly Walk, Austin, Texas 78746.

Driver's License Number: Unknown

Social Security Number: Unknown

Date of Birth: Unknown

Attached are Travis County CAD records for the properties at 6203 Olympic Overlook and 6304 Whitemarsh Vly Walk in Austin, Travis County, Texas. Debtor claims a homestead exemption on Olympic Overlook property.

Payment of the fee for the re-issuance of this Writ will be paid electronically with this request.

If additional information is needed, please contact our office at (512) 279-6431.

Very truly yours,

Denton Navarro Rocha Bernal & Zech, P.C.
attorneys & counselors at law • rampagelaw.com



SCOTT M. TSCHIRHART
smtschirhart@rampagelaw.com

SMT/ha

Enclosures: As stated

cc: David Rogers
Law Office of David Rogers
595 Round Rock West Drive, Suite #102
Round Rock, Texas 78681

E-FILE NOTIFICATION

RETURN TO: Denton Navarro Rocha Bernal & Zech, P.C.
Attn: Scott M. Tschirhart
25000 W. William Cannon Drive, Suite 609
Austin, Texas 78745



THE STATE OF TEXAS
County of Travis

CAUSE NO. D-1-GN-15-003714

A B S T R A C T O F J U D G M E N T

I, **VELVA L. PRICE**, Clerk of the District Court of TRAVIS County, Texas, do hereby certify that in the District Court of Travis County, Texas, in a certain suit pending in the 419TH JUDICIAL DISTRICT COURT.

D-1-GN-15-003714, wherein

DAVID MCINTYRE AND MADELEINE CONNOR
and

, Plaintiff(s)

ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH STEWARD, CHARLES MCCORMICK,
TOM CLARK AND JANE/JOHN DOE 1, 2, AND 3, WHOSE BIRTH DATES, SOCIAL SECURITY
NUMBERS AND DRIVER'S LICENSE ARE NOT AVAILABLE TO THE CLERK

, Defendant(s)

the said

ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH CHARLES MCCORMICK AND JANE/JOHN DOE 1, 2,
AND 3

BY AND THROUGH THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL
C/O DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.
2500 W. WILLIAM CANNON, STE. 609
AUSTIN, TEXAS 78745

Recovered judgment against the said
DAVID MCINTYRE
6201 AUGUSTA NATIONAL DRIVE
AUSTIN, TEXAS 78746

AND

MADELEINE CONNOR
6203 OLYMPIC OVERLOOK
AUSTIN, TEXAS 78746

AND

6304 WHITEMARSH VLY WALK
AUSTIN, TEXAS 78746

On the JUNE 23, 2017 JOINTLY AND SEVERALLY for the sum of **TWENTY-SEVEN THOUSAND SEVEN HUNDRED AND 67/100 DOLLARS (\$27,700.67)**.

Said judgment is entitled to following credits, to-wit: NONE.

There is now still due on said judgment **\$27,700.67**, with interest as hereinabove set out.

Given under my hand and seal of office at Austin, Texas, December 02, 2019.



Velva L. Price
Velva L. Price
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 670003 (78767)
Austin, TX 78701

PREPARED BY: CARRISA ESCALANTE

D-1-GN-15-003714

☒ Original☐ File Copy

P46 - 000001175



2019188751

**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**

Dana DeBeauvoir

**Dana DeBeauvoir, County Clerk
Travis County, Texas**

Dec 02, 2019 02:13 PM

Fee: \$30.00

MEDINAE



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MADELEINE CONNOR,

Plaintiff,

v

LEAH STEWART,
ERIC CASTRO, and
CHUCK MCCORMICK,

Defendants

17-CV-827-RP

ORDER

Before the Court are Defendants Leah Stewart, Eric Castro, and Chuck McCormick's (collectively, "Defendants") Amended Motion for Attorneys' Fees, (Dkt. 59), and Motion for Additional Sanctions, (Dkt. 60). Having considered the parties' briefing, the record, and the relevant law, the Court will grant both motions.

I. BACKGROUND

Plaintiff Madeleine Connor ("Connor") lives in the Lost Creek Municipal Utility District ("Lost Creek") and Defendants Leah Stewart, Eric Castro, and Chuck McCormick (collectively, "Defendants") are all directors of Lost Creek (Compl., Dkt. 1, at 1-2). Connor has now sued Defendants three times in this Court for the same cause of action. *See McIntyre v. Castro*, No. 1:15-CV-1100 RP, 2016 WL 1714919, at *4 (W.D. Tex. Apr. 8, 2016), *aff'd*, 670 F. App'x 250 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016) ("McIntyre I"), *McIntyre v. Castro*, No. 1:16-CV-490 RP, 2017 WL 1483572, at *3 (W.D. Tex. Apr. 25, 2017), *aff'd in part sub nom. Connor v. Castro*, 719 F. App'x 376 (5th Cir. 2018) ("McIntyre II"), *Connor v. Stewart*, No. 1:17-CV-827-RP, 2018 WL 2994644, at *1 (W.D. Tex. June 14, 2018), *aff'd*, 770 F. App'x 244 (5th Cir. 2019). In all three cases, the Court determined

that Connor's claims were not well-grounded in law or fact and dismissed Connor's lawsuits for failure to state a plausible claim for relief. *See id.*

In *McIntyre I*, Connor alleged that Defendants sent a "pejorative" email with "evil intent" to Lost Creek residents "purporting to be an 'update' about" a lawsuit she filed against Defendants (*McIntyre I*, Compl., Dkt. 5, at 1). Upon reviewing the email, the Court determined that it was not pejorative, but rather that it "simply state[d] the basis of Plaintiffs' claims and that Defendants rebut them." *McIntyre I*, 2016 WL 1714919, at *4. The Court dismissed Connor's claim, holding that her allegations fell "well short of supporting a claim for First Amendment retaliation." *Id.* Connor appealed. The United States Court of Appeals for the Fifth Circuit ("Court of Appeals") affirmed the Court's opinion, specifically finding that Connor's allegations did "not constitute retaliation." *McIntyre v. Castro*, 670 F. App'x 250, 251 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016).

One week after the Court issued its order in *McIntyre I*, and while her appeal remained pending, Connor sued Defendants again (*See McIntyre II*, Notice of Removal, Dkt. 1, at 3). Connor's *McIntyre II* complaint—her seventh amended petition in state court—alleged a First Amendment retaliation claim "nearly identical" to her claim in *McIntyre I*. *McIntyre II*, 2017 WL 1483572, at *4. The Court again dismissed the claim. *Id.* Connor then moved to amend her complaint to add another First Amendment retaliation claim, the Court denied her motion. *Id.* at *6. Connor appealed that decision. *Connor v. Castro*, 719 F. App'x 376, 379 (5th Cir. 2018). The Court of Appeals affirmed this Court's decision, agreeing that it would have been futile to permit her to add the claim. *Id.* at 380.

In *McIntyre II*, the Court found that the record gave "the impression that the current litigation may be motivated as much or more by animosity between Connor and the Defendants

¹ There were two named plaintiffs in *McIntyre I* and *McIntyre II*—Madeleine Connor and David McIntyre. *See McIntyre I*, 2016 WL 1714919; *McIntyre II*, 2017 WL 1483572.

than any legally cognizable injury Plaintiffs may have suffered " *McIntyre II*, 2017 WL 1483572, at *6. The Court stated that Connor's conduct, which included her "presentation of an objectively benign e-update as defamatory," was troubling. *Id.* In continuing "to engage in motion practice to add allegations that [were] plainly insufficient"—particularly in light of this Court's prior order, which was subsequently affirmed by the Court of Appeals—this Court found that her conduct fell "well short of what this Court expects of its officers." *Id.* While the Court declined to sanction Connor at that time, it warned her it would "not hesitate to consider sanctions—whether on motion or on its own initiative" should Connor continue to litigate this issue in the future. *Id.*

Despite that warning, Connor filed a third lawsuit in this Court, again alleging a First Amendment retaliation claim on the basis of an objectively benign litigation update. (Am. Compl., Dkt. 8, at 2). In doing so, she repeated a claim that had been twice rejected by this Court and once by the Court of Appeals. *McIntyre I*, 2016 WL 1714919, at *4; *McIntyre II*, 2017 WL 1483572, at *4; *McIntyre v. Castro*, 670 F. App'x 250, 251 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016). Her only new theory of retaliation—that Defendants intended to punish her by filing a valid defensive motion in a lawsuit that she brought against them—was one the Court determined Connor, a lawyer, should understand to be frivolous. (Order, Dkt. 31, at 10). Again, this Court dismissed Connor's action as meritless. (*Id.*)

In dismissing Connor's third baseless lawsuit, this Court recited her history of vexatious litigation and found that Connor filed the action for "the improper purpose of harassing and imposing litigation costs on Defendants." (*Id.*) The Court determined that the appropriate Rule 11 sanction was to require Connor to pay Defendants' reasonable attorneys' fees and expenses related to this action. (*Id.* at 11). The Court then ordered Defendants to submit a motion for reasonable attorneys' fees and expenses. (*Id.* at 12). Concluding that a pre-filing injunction might be appropriate to deter Connor from using the courts "as a weapon of harassment" against the Defendants, the

Court also ordered the parties to attend a hearing to consider the proper scope of a pre-filing injunction (*Id.* at 8, 12)

Pursuant to the Court's order, Defendants filed a motion requesting \$16,235.16 in reasonable attorneys' fees and expenses (Mot. Att'y Fees, Dkt. 32, at ¶ 18). The Court ultimately denied Defendants' motion because they failed to comply with Rule 11's safe harbor provision (Order, Dkt. 42, at 3). However, after giving Connor the required notice and hearing, (Dkt. 31, 40), the Court imposed a pre-filing injunction against Connor *sua sponte*, barring her from filing any civil action "against Defendants or other officers of the Lost Creek Municipal Utility District, directly or indirectly, in the Western District of Texas without receiving written leave from a federal district judge for this district" (Order, Dkt. 42, at 9).

Connor appealed that order (Dkt. 44). Her appeal was dismissed because she didn't timely file her brief (Dkt. 47). The Fifth Circuit subsequently reinstated her appeal (Dkt. 48). The Fifth Circuit then affirmed this Court's order without an opinion (Dkt. 50, Ex. S). She petitioned for rehearing by the panel. (*Id.* at Ex. T). After nearly a year of defending the appeal, Defendants then filed a motion for appellate sanctions (*Id.* at Ex. U). In that motion, Defendants expressly argued that Connor's entire appeal was frivolous and sought sanctions pursuant to Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1912. (Dkt. 50, at 1 ("Now come Appellees, Leah Stewart, Eric Castro and Chuck McCormick and file their Motion for Sanctions pursuant to Federal Rule of Appellate Procedure 38", "The current appeal is frivolous on its face in that Appellant makes the same arguments that have been previously rejected by the trial court and this honorable Court", "[T]his Court [should] remand this case to the district court 'to determine the amount of costs and damages to be paid to appellees, as provided by 28 U.S.C. § 1912'"))

The Court of Appeals granted Defendants' motion and remanded to the district court "to determine the amount of costs and damages to be paid to appellees, as provided by 28 U.S.C.

§ 1912" (Dkt. 49 at 1). The Court of Appeals further cautioned Connor, "a lawyer representing herself pro se," that "any further prolongation of this case will likely result in additional sanctions" (*Id.* at 2). Except for "the determination of costs and sanctions by the district court on remand," the Court of Appeals stated, in all caps, "THIS CASE IS OVER" (*Id.*)

On remand, Defendants filed two motions for attorneys' fees and costs, (Dkt. 50, 53), neither of which complied with this Court's Local Rules W.D. Tex. Loc. R. CV-7()(1). The Court ordered Defendants to properly confer with Connor and file an amended motion for attorneys' fees, costs, and sanctions that adhered to the local rules (Order, Dkt. 56, at 2). The Court further ordered the parties to "advise the Court what other sanctions, if any, they believe to be appropriate" (*Id.* at 1). Defendants then filed an Amended Motion for Attorneys' Fees, (Dkt. 59), and a Motion for Additional Sanctions, (Dkt. 60). Those motions are now before the Court, (Mot. Att'y Fees, Dkt. 59, Mot. Sanctions, Dkt. 60). First, the Court will turn to Defendants' Motion for Attorneys' Fees, (Dkt. 59), which requests attorneys' fees, costs, and expenses incurred defending against Connor's appeal. Second, the Court will address Defendants' Motion for Additional Sanctions, (Dkt. 60), which requests sanctions in the form of attorneys' fees incurred defending this lawsuit before this Court.

II. DISCUSSION

A. Motion for Attorneys' Fees, Costs, Expenses

Pursuant to the Court of Appeals' mandate, Defendants seek \$13,636.50 in attorneys' fees, \$276.27 in expenses, and double costs in the amount of \$58.00 for damages incurred in defending against Connor's appeal from October 1, 2018, the date Connor filed her Notice of Appeal, (Dkt. 44), and June 21, 2019, the date the Court of Appeals granted Defendants' motion for sanctions and remanded to the District Court for a determination of the amount of costs and damages, (Dkt. 49) (Mot. Att'y Fees, Dkt. 59, at 4-5).

Connor contends that the Court should deny Defendants' request for attorneys' fees and costs because it "does not comply with this District's rule concerning the form, content, timeframe, or conference provisions of a request for attorney's fees" (Pl's Resp, Dkt 61, at 2 (citing W D Tex Loc R CV-7(j)(1)-(3))). Alternatively, Connor asks that the Court limit Defendants' fees and costs to those associated with the delay caused by her filing a motion for rehearing rather than awarding Defendants the fees and costs accrued in defending against the appeal as a whole (*Id.* at 12). The Court finds both of these arguments lacking and discusses each of them in turn below.

1 Defendants' Motion Complies with the Local Rules

Connor contends that Defendants' motion for attorneys' fees should be denied—"save perhaps double costs, which 28 U.S.C. § 1912 permits, presumably without any form of motion being timely and compliantly filed"—because it does not comply with Local Rule CV-7(j). On this point, Connor makes three arguments. First, she contends that Defendants did not satisfy the "meet and confer" requirement under the local rules because "Defendants' counsel refused to have any substantive discussions with Plaintiff regarding their request for fees and sanctions and walked out of the conference after the passage of only fifteen minutes" (Dkt 61 at 3–5). Second, she argues that Defendants' motion did not certify her specific objections to Defendants' requested attorneys' fees, objections she alleges she could not specifically articulate "because only an oral number was proposed, with no detail" (Dkt 61 at 6). Third, Connor contends that while Defendants' motion includes a billing document, it does not comply with the drafting and certification requirements, specifically, she argues that attaching a 22-page billing statement without "a more easily readable table" skirts the simplicity the local rules "seem to encourage" (*Id.*).

The Court concludes that Defendants' motion properly complies with the local rules. *See* W D Tex Loc R CV-7(j). It is undisputed that Defendants' counsel met in person with Connor on July 30, 2019 to discuss their intention to seek attorneys' fees (*see* Pl's Resp, Dkt 61, at 4). During

that meeting, Defendants "repeatedly asked" for Connor's objections to the fee amount, but Connor only offered a specific objection to one eight-hour billing entry (Defs' Reply, Dkt 59, at 6). Defendants noted this objection in their motion and properly "certified the reason why the matter could not be resolved by agreement" W D Tex. Loc. R. CV-7(j), (*see also* Mot. Att'y. Fees, Dkt 59, at 5-7 ("The parties could not reach an agreement because Plaintiff offered [an amount] inconsistent with Defense counsel's authority")) And Rule 7(j) imposes no time requirement for a conference. *See* W D Tex. Loc. R. CV-7(j). From the Court's perspective, fifteen minutes is sufficient to entertain that single objection.

Moreover, Connor's contention that she "could not articulate a specific objection" to "an oral request for \$40,000" because Defendants tendered the fee-bill to her "only 30 minutes before the meeting convened" is a flagrant misrepresentation of the facts (Pl.'s Resp., Dkt 61, at 5). Defendants provided statements and draft bills with their Motion for Attorneys' Fees and Costs pursuant to the order from the Court of Appeals, (Dkt 49), on June 25, 2019 (Orig. Mot. Att'y Fees, Dkt. 50). Defendants emailed Connor with an updated set of statements on July 24, 2019, a full six days before the conference (Email, Dkt 63-1, at 1). In that same email, Defendants' counsel expressly indicated that Defendants intended to seek attorneys' fees and costs incurred for the entire appeal and additional sanctions in the form of attorneys' fees and costs related to the rest of the case (*Id.* at 1). Connor had the time and the information necessary to formulate her objections ahead of the conference and did not do so. She cannot now misrepresent the record to manufacture noncompliance with the local rules in an attempt to evade sanctions.

Connor's argument that Defendants' motion should be denied because it "does not comply with the drafting and certification requirements of the rule" is likewise baseless (Pl.'s Resp., Dkt 61, at 6). Defendants' motion contains the requisite chronological billing activity, affidavit, and memorandum setting forth the method by which fees were computed W D Tex. Loc. R. CV-

7(j) There is no requirement that a movant for reasonable attorneys' fees include "a more easily readable table," (Pl's Resp, Dkt 61, at 6), billing records provide sufficient support for the legal services rendered by Defendants in defending this action. *People's Capital & Leasing Corp. v McClung*, No 5:17-cv-484-OLG, 2018 WL 7291447, at *2 (W.D. Tex. Aug. 20, 2018) ("Plaintiff's attorney's fees request is properly supported by copies of the invoices for legal services.") Moreover, Defendant's counsel attested to the reasonableness of these rates in an affidavit attached to the motion (Tschirhart Aff, Dkt. 59-2, at 1-2), W.D. Tex. Loc. R. CV-7(j).

Thus, the Court concludes that Defendants' Motion for Attorneys' Fees complies with the local rules and Connor's arguments to the contrary are, predictably, without merit. The Court will now turn to Connor's next argument pertaining to the scope of the Court of Appeals' mandate.

2. Defendants are Entitled to Fees and Costs for the Entire Appeal

Connor contends that Defendants' request for attorneys' fees and costs incurred for the entire appeal should be denied because the Court of Appeals "rejected" Defendants' "repeated requests in the appellate court to award fees and sanctions for frivolous appeal." (Pl's Resp, Dkt 61, at 8) In support of this argument, Connor cites to the text of the Court of Appeals' order, which she notes omits the words "frivolous" and "Rule 38" and cites only to 28 U.S.C. § 1912. *Id.* Connor interprets these omissions to mean the Court of Appeals denied Defendants' request for sanctions pursuant to Rule 38 and instead limited the scope of sanctions on remand to the delay associated with Connor's decision to file a motion for panel rehearing. (*Id.*)

Under Federal Rule of Appellate Procedure 38, "[i]f a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Meanwhile, 28 U.S.C. § 1912 provides that "[w]here a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and

single or double costs " 28 U S C § 1912. Importantly, the rule—unlike the statute—allows a court to order damages and costs for a frivolous appeal without finding that the appeal resulted in delay. See Fed R App P 38 advisory committee notes to 1967 adoption, *see also State of Tex. v. Gulf Water Benefaction Co.*, 679 F 2d 85, 87 n 1 (5th Cir 1982), *Hagerty v. Succession of Clement*, 749 F 2d 217, 222 (5th Cir 1984) ("[T]he courts of appeals quite properly allow damages, attorney's fees and other expenses incurred by an appellee if the appeal is frivolous without requiring a showing that the appeal resulted in delay"). An award of damages and double costs as sanctions for the filing of a frivolous appeal "may be made against an appellant under 28 U S C § 1912 and Fed R App P 38." *Olympia Co. v. Celotex Corp.*, 771 F 2d 888, 893 (5th Cir 1985). Thus, if a frivolous appeal results in delay, courts may use Rule 38 and 28 U S C § 1912 interchangeably. See *Exhibitors Poster Exch., Inc. v. Nat'l Screen Serv. Corp.*, 78 F.R.D. 192, 195 (E.D. La 1978).

Having reviewed the Court of Appeals' order and the appellate record as a whole, the Court concludes that it may determine costs and damages related to the entire appeal; that is, the Court of Appeals' mandate does not limit apportionable damages to the delay associated with Connor's motion for panel rehearing. As an initial matter, the Court of Appeals *granted* Defendants' motion for appellate sanctions. (See Fifth Cir Order, Dkt 49, at 1 ("IT IS ORDERED that appellees' motion for sanctions, attorney fees, and costs is **GRANTED**")) Defendants based their appellate motion for sanctions on the frivolousness of Connor's entire appeal, not on the delay associated with her filing a motion for panel rehearing (Defs' App Mot Sanctions, Dkt 50, Ex U, at 2 ("[T]he current appeal is frivolous on its face in that Appellant makes the same arguments that have been previously rejected by the trial court and this honorable Court"). Throughout the motion, Defendants specifically argued for sanctions pursuant to Rule 38, cited cases pertaining to frivolous appeals within the purview of Rule 38, and sought relief pursuant to Rule 38 (See *id.* ("Sanctions under Rule 38 are appropriate"), *id.* (citing cases pertaining to sanctions imposed pursuant to Rule

38), *id* at 6 ("For the foregoing reasons, this Court should find that Appellant's arguments are frivolous, that sanctions under Fed R App P 38 are warranted, that Appellees have incurred attorneys' fees and expenses as a result of Appellant's frivolous litigation ") Even Connor concedes that the appellate motion "largely" "requests sanctions and damages pursuant to Rule of Appellate Procedure 38, and only requests relief under 28 U S C § 1912 on the final page " (Resp , Dkt 61, at

7) Thus, granting Defendants' motion *was* a finding that Connor's appeal was frivolous

Connor's textual argument is therefore unavailing While the Court of Appeals' order does "remand this case to the district court to determine the amount of costs and damages to be paid to appellees, as provided by 28 U S C § 1912," courts often use Rule 38 and 28 U S C § 1912 interchangeably when the appeal is frivolous and resulted in delay *Exhibitors Poster Exch, Inc v Nat'l Screen Serv. Corp.*, 78 F R D 192, 195 (E D La 1978) ("Various courts have referred to and utilized F R A P 38 and 28 U S C § 1912 interchangeably", *see also Exhibitors Poster Exch, Inc. v. Nat'l Screen Serv Corp.*, 543 F 2d 1106, 1107 (5th Cir 1976) ("The appellees have filed in this Court a motion for damages for frivolous appeal under Rule 38, F R A P The motion is well taken We remand this case to the district court to determine the amount of costs and damages to be paid to the appellees, as provided by 28 U S C. § 1912 "); *Olympia Co. v Celotex Corp.*, 771 F 2d 888, 892-93 (5th Cir 1985) (noting that an award of damages and double costs for the filing of a frivolous appeal "may be made against an appellant under 28 U S C. § 1912 and Fed R App P 38 ") This is especially so when the appeal has resulted in delay, indeed, the only reason to distinguish between the statutory basis for sanctions and the rule would be if the Court of Appeals intended to award sanctions for a frivolous appeal without making a finding that the appeal resulted in delay *See* Fed R App P 38 advisory committee's note to 1967 adoption

Finally, in citing to § 1912, the Court of Appeals did not limit the scope of sanctions to the delay associated with Connor's filing of a motion for panel rehearing, as she contends Nothing in

Defendants' motion for appellate sanctions, which the Court of Appeals granted, limits the requested relief to the delay associated with one portion of Connor's appeal and nothing in the Court of Appeals' order imposes such a limitation either (*See* Defs' Mot App Sanctions, Dkt 50, Ex. U, 5th Cir Order, Dkt 49, at 1-2) For nearly a year, Connor prosecuted a meritless appeal with no legitimate prospect of success After filing her Notice of Appeal, (Dkt 44), she ignored the transcript order deadline, (Dkt 50, Ex A), waited six days after the Clerk sent her an email about missing the deadline to request more time, (*id.* at Ex C), delayed ordering the transcript again, (*id.* at Ex D), moved for a fifteen-day extension to file her appellate brief, (Dkt 50, Ex F), and then filed for another extension the day before her brief was due, (Dkt 50 at Ex G) When the Court of Appeals denied Connor's motion for an extension, (Dkt 50 at Ex I), Connor filed a motion to reconsider arguing that "in seventeen years of practice, she had never personally been denied an extension of time to file an opening brief " (Dkt 50, Ex J) The Court of Appeals denied her motion and dismissed her appeal for want of prosecution shortly after (Dkt 50, Ex K, L) Then, Connor filed two additional motions, which the Court of Appeals took no action on because it had dismissed her appeal (Mot Attorneys' Fees, Dkt 50, at 4) Connor then filed a motion to reopen the appeal (Dkt 50, Ex O)

The Court of Appeals granted her motion and reinstated her appeal (Dkt 50, Ex Q) After considering Connor's arguments on appeal, the Court of Appeals then affirmed this Court's order without an opinion (Dkt 50, Ex S) In an attempt to further prolong meritless litigation, Connor filed a petition for panel rehearing (Dkt 50, Ex T) At this point, after almost a year of investing time and resources into defending against Connor's various delay tactics, Defendants filed a motion for appellate sanctions, which the Court of Appeals granted. (Dkt 50, Ex. U)

Because Connor's frivolous appeal resulted in nearly a year of delay, the Court of Appeals remanded to the District Court for a determination of costs and damages pursuant to § 1912. *See*

Fed R. App. P. 38 advisory committee's note (explaining that Rule 38 and § 1912 can be used interchangeably, the only difference being that § 1912 requires a showing of delay) And the appellate record makes clear that Connor delayed prompt adjudication of this dispute throughout the entire appeal.

Finding no reason to limit the scope of sanctions to the attorneys' fees and costs associated with Connor's motion for panel rehearing, the Court will assess against Connor the attorneys' fees and costs incurred by Defendants in defending against the entire frivolous appeal.

1. Attorneys' Fees

Defendants contend that from October 1, 2018 (the date Connor filed her Notice of Appeal) through June 21, 2019 (the date the Court of Appeals issued its mandate) they incurred \$13,636.50 in reasonable and necessary attorneys' fees and \$276.27 in expenses defending against Connor's frivolous appeal (Mot. Sanctions, Dkt. 59, at 5). As supporting documentation, Defendants submit an affidavit from Defendants' counsel of record and detailed billing records (Tschirhart, Dkt. 59-2, at 1-2, Invoices, Dkt. 59-3, at 1-18). Defendants' request for attorneys' fees is based on the following rates: \$195 (later \$210) per hour for Partners, \$175 (later \$180) per hour for Senior Associates, and \$75 (later \$85) for paralegal time (Tschirhart Aff., Dkt. 59-2, at 1). Defendants' memorandum notes that these fees "are based upon a bargained-for agreement" and represent "the same fees commonly charged for this kind of work by our Firm all over the State of Texas" (Defs.' Fee Calculation Memo, Dkt. 59-4, at 2).

The Court finds that the attorneys' fees requested are reasonable in light of the well-known *Johnson* factors.² *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989). In defending against Connor's appeal, Defendants' counsel spent nearly a year reviewing and drafting responses to Connor's various requests for extensions of time and other obstinate efforts to deny Defendants a prompt resolution of the dispute. (*See e.g.* Invoice, Dkt. 59-3, at 8-17). Upon examining Defendants' detailed records, the Court finds the time and labor documented to be reasonable in light of the issues involved and the skill required. *See id.* Moreover, the fees charged for the services are consistent with fees charged for such services in the geographic area amongst lawyers with similar experience, reputation, and ability. *See id.* Finally, Connor has not challenged the requested rates and fees; her response to Defendants' attorney's fees motion only contests compliance with W.D. Tex. Loc. R. CV-7(j) and the scope of the Court of Appeals' mandate.³ While she proffers her own attorneys' fee offer—\$525.00—she does not explain why Defendants' requested rates and fees, supported by invoices, affidavits, and memorandum, are unreasonable. Thus, the Court concludes that Defendants are entitled to the \$13,636.50 in requested attorneys' fees and \$276.27 in requested expenses.

² The *Johnson* factors are (1) the time and labor required to represent the client or clients, (2) the novelty and difficulty of the issues in the case, (3) the skill required to perform the legal services properly, (4) the preclusion of other employment by the attorney, (5) the customary fee charged for those services in the relevant community, (6) whether the fee is fixed or contingent, (7) the time limitations imposed by the client or circumstances, (8) the amount involved and results obtained, (9) the experience, reputation, and ability of the attorney, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989).

³ While Connor objected to one billing entry when the parties met to confer, Defendants "adjusted that particular entry, in response to [Connor's] objection, by reducing it accordingly," (Defs.' Reply, Dkt. 63, at 4), and Connor's Response in Opposition to Defendants' Motion for Attorneys' Fees and Costs, (Dkt. 61), does not raise objections with respect to the requested rates and fees, only to the manner in which these rates and fees were discussed. *See* Pl.'s Resp., Dkt. 61, at 3-4 (objecting to Defendants' "global request for \$40,000" as noncompliant with the meet and confer requirements under W.D. Tex. Loc. R. CV-7(j), but raising no other specific objections to the rates and fees incurred).

n. Costs

The Court of Appeals also remanded this case for a determination of costs (*See* Fifth Cir. Mandate, Dkt 49, at 1) "Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs" 28 U.S.C. § 1912. Federal Rule of Appellate Procedure 38 likewise allows for "just damages and single and double costs to the appellee" when an appeal is frivolous. *Garza v. Westergren*, 908 F.2d 27, 29 (5th Cir. 1990) ("[A]n award of attorney's fees and double costs pursuant to Federal Rule of Appellate Procedure 38 is proper, because this appeal is frivolous.") Defendants submitted a Bill of Costs to the Court of Appeals in the amount of \$29.40 in taxable costs, (Bill of Costs, Dkt 50, Ex. W, at 166), and ask the Court to award double costs in the amount of \$58.00 (Mot. Att'y Fees, Dkt 59, at 3-5).

The Court concludes that this case is a textbook example of a scenario where double costs are warranted. Here, Connor's appeal was not only frivolous, but also resulted in significant delay. For nearly a year, Connor prolonged unmentionous litigation, with no legitimate prospect of success. In continuing to litigate a meritless appeal and leaving no delay tactic unturned, Connor "imposed an unnecessary burden on [the Court of Appeals] and has infringed on the rights of the appellees who are entitled to a prompt adjudication of this dispute." *Haggerty v. Succession of Clement*, 749 F.2d 217, 222 (5th Cir. 1984). Accordingly, the Court determines that Defendants' request for double costs in the amount of \$58.00 is warranted (*See* Dkt 59, at 5).

B. Motion for Additional Sanctions

In response to this Court's order, (Dkt 56), Defendants filed a motion requesting additional sanctions in the form of "all of the attorneys' fees and costs incurred by Defendants in the proceedings before this honorable court" (Mot. Add. Sanctions, Dkt 60, at 2). In the alternative, Defendants ask the Court to sanction Connor by "entering an Order temporarily disbar[ri]ng [her]

from the practice of law before the Courts in the Western District of Texas for a period of not less than six (6) months" (*Id.* at 2-3). Ultimately, Defendants just want the Court to "fashion a sanction that would deter [Connor] from continuing to use the [c]ourts as a weapon of harassment against them and those who are connected with them." (*Id.* at 2). Defendants provide two possible bases for additional sanctions. First, Defendants contend that Connor, a licensed attorney, could be sanctioned pursuant to 28 U.S.C. § 1927. Second, Defendants contend the Court can sanction Connor pursuant to its inherent authority.

Connor argues that this Court lacks the authority to issue additional sanctions because the Court of Appeals' remand order only allows for an assessment of fees for delay under 28 U.S.C. § 1912, which Connor isolates to fees accrued by the Defendants after she filed a motion for panel rehearing (Pl.'s Resp., Dkt. 62, at 2). She argues that on remand a trial court cannot deviate from the mandate of the appellate court and that the Court of Appeals' mandate requires this Court to assess fees only for delay under 28 U.S.C. § 1912 (*Id.*).

As previously discussed, the Court finds nothing in the text of the Court of Appeals' remand order that limits sanctions to the delay associated with Connor's motion for panel rehearing. *See infra* Part II A 2. Moreover, the Court of Appeals' mandate covers appellate sanctions and says nothing about this Court's power to sanction Connor for her unreasonable and vexatious conduct before this Court. Because the pre-filing injunction imposed by this Court, (Order, Dkt. 42, at 9), has not deterred Connor from continuing to harass Defendants with unmentionous litigation—both in this Court and others—the Court will assess additional monetary sanctions against Connor.

1 Sanctions pursuant to 28 U.S.C. § 1927

Under 28 U.S.C. § 1927, "[a]ny attorney who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." To impose sanctions

pursuant to this provision, the conduct multiplying the proceedings must be both "unreasonable" and "vexatious." *Morrison v Walker*, 939 F 3d 633, 637–38 (5th Cir 2019) "Conduct is 'unreasonable and vexatious' if there is evidence of the 'persistent prosecution of a meritless claim' and of a 'reckless disregard of the duty owed to the court.'" *Id* "An attorney acts with "reckless disregard" of [her] duty to the court when [s]he, without reasonable inquiry, advances a baseless claim despite clear evidence undermining [her] factual contentions." *Id* at 638

In support of § 1927 sanctions, district courts often rely on "repeated filings despite warnings from the court, or other proof of excessive litigiousness, to support imposing sanctions." *Procter & Gamble Co v Amway Corp.*, 280 F 3d 519, 525 (5th Cir 2002) Before imposing such sanctions, the court must "make detailed factual findings," including "(1) identifying the sanctionable conduct as distinct from the case's merits, (2) linking the sanctionable conduct and the sanction's size, and (3) identifying the legal basis for each sanction." *Morrison*, 939 F 3d at 638 "To shift the entire cost of defense, the claimant must prove, by clear and convincing evidence, that *every fact* of the litigation was patently meritless, and counsel must have lacked a reason to file the suit and must wrongfully have persisted in its prosecution through discovery, pre-trial motions, and trial." *Procter & Gamble Co.*, 280 F 3d at 526 (emphasis in original)

For the reasons stated below, the Court concludes that Connor's conduct in filing and persistently litigating this lawsuit unreasonably and vexatiously multiplied the proceedings against Defendants and sanctions are thus warranted under § 1927

1. Reasonableness

This is Connor's third, meritless First Amendment retaliation lawsuit before this Court. In bringing this latest lawsuit, Connor knew that this Court had twice dismissed—and the Court of Appeals had previously affirmed dismissal of—Connor's nearly identical claims. See *McIntyre v. Castro*, No. 1:15-CV-1100 RP, 2016 WL 1714919, at *4 (W.D. Tex. Apr. 8, 2016), *aff'd*, 670 F. App'x 250

(5th Cir 2016), *reh'g denied* (Dec 9, 2016) ("*McIntyre I*"), *McIntyre v. Castro*, No. 1:16-CV-490 RP, 2017 WL 1483572, at *3 (W.D. Tex. Apr. 25, 2017), *aff'd in part sub nom. Connor v. Castro*, 719 F. App'x 376 (5th Cir. 2018) ("*McIntyre II*"). By filing this third lawsuit, Connor persistently prosecuted a mendacious claim and thus unreasonably multiplied proceedings that should have concluded with the resolution of *McIntyre I*.

ii. Vexatiousness

To impose sanctions pursuant to § 1927, counsel's multiplication of proceedings must be not only unreasonable, but also vexatious. *See Morrison*, 939 F.3d at 637–38. The Court concludes that Connor vexatiously multiplied the proceedings in reckless disregard of the duty owed to this Court. *See id.* This Court's dismissal of *McIntyre I* put Connor on notice that claims for First Amendment retaliation based on a benign litigation status update were mendacious. *See McIntyre I*, 2016 WL 1714919, at *4. *McIntyre II* did not remedy these deficiencies and this Court admonished Connor's decision to continue to assert a claim nearly identical to the one previously dismissed, questioned her motivation, and warned of possible future sanctions if she continued to exhibit conduct that "falls short of what this Court expects of its officers." *McIntyre II*, 2017 WL 1483572, at *6. Connor was not deterred. Instead, she filed a nearly identical lawsuit, indifferent to this Court's warnings (Compl., Dkt. 1). In light of the record as a whole, the Court concludes that Connor pursued this third lawsuit in bad faith and for the improper purpose of harassing and annoying Defendants. Such conduct constitutes a reckless disregard of the duty owed to this Court.

As noted in this Court's previous order, "Connor's extensive and mendacious litigation history against Defendants and other Lost Creek directors indicates a commitment to use the courts as a weapon of harassment against them" (Order, Dkt. 42, at 8–9). Despite this Court's two prior dismissals of nearly identical First Amendment retaliation claims against Defendants, she filed a third lawsuit alleging First Amendment retaliation on the basis of the same benign litigation update.

See McIntyre v. Castro, No 1-15-CV-1100 RP, 2016 WL 1714919, at *4 (W D Tex Apr 8, 2016), *aff'd*, 670 F App'x 250 (5th Cir 2016), *reh'g denied* (Dec. 9, 2016) ("*McIntyre I*"), *McIntyre v. Castro*, No 1 16-CV-490 RP, 2017 WL 1483572, at *3 (W D Tex Apr 25, 2017), *aff'd in part sub nom Connor v. Castro*, 719 F App'x 376 (5th Cir 2018) ("*McIntyre II*"), *Connor v. Stewart*, No 1 17-CV-827-RP, 2018 WL 2994644, at *1 (W D Tex June 14, 2018), *aff'd*, 770 F App'x 244 (5th Cir 2019) In doing so, she advanced a "baseless claim despite clear evidence undermining her factual contentions," namely, two prior dismissals and an affirmance by the Court of Appeals. *See id.* Throughout the litigation, Connor made claims that were "not merely meritless" but also made in bad faith for the purpose of harassing Defendants. (*See* Order, Dkt 42, at 7) Given Connor's repeated efforts to advance allegations against Defendants in bad faith at every step of the litigation, shifting the entire burden of defending this lawsuit onto Connor is not only appropriate, but necessary to deter Connor from harassing Defendants with more meritless litigation in the future.

Moreover, the monetary sanctions issued by state courts in similar litigation have not deterred Connor from filing this action, indicating the need for additional monetary sanctions. (*See* Orders, Dkt 38-2) Even more troubling, Connor recently misrepresented the record in this case in a related state court action, attesting to a state court judge that this Court had dismissed her state law claims, when in fact this Court had merely declined to exercise supplemental jurisdiction over them and remanded them back to Texas state court. (*See* Advisory to the Court, Dkt 67, at 1-5), *compare McIntyre II*, 2017WL 1483572, at *5 ("In light of the dismissal of Plaintiffs' federal claims, this Court will decline to exercise supplemental jurisdiction. Accordingly, the state law claims against Defendants are properly remanded back to Texas state court.") *with* Connor's Request for Abstract Judgment, Dkt 67-1, at 1 ("[T]he record clearly indicates that the claims dismissed by the Hon Karin Crump had already been dismissed by the Western District of Texas, and therefore, the order is subject to collateral attack and injunctive relief") As this Court has already admonished, "Connor

has the legal training and experience to understand that the state-law portion of Defendants' motion was not adjudicated by this Court, which remanded Connor's state-law claims" (Dkt 31 at 7). Therefore, Defendants' requested sanctions are also appropriate to deter Connor from misrepresenting this Court's record for the purpose of harassing defendants in an alternate forum.

Finally, Connor's frivolous filings have needlessly diverted this Court's time and resources away from the hundreds of meritorious cases and controversies on its docket (*See* Order, Dkt 42, at 8 (discussing the burden that Connor's high volume of motions in this action and previous actions have had on this Court)). Thus, in continuing to prosecute her claims in bad faith, Connor not only saddled Defendants with the burden of defending against frivolous claims, but she also impeded this Court's ability to direct its attention to the meritorious plaintiffs on its docket in need of relief. Connor has imposed a similar burden on the Texas state court system. *See id.* (discussing the burden Connor's litigation tactics have placed on the state court system, particularly the five-hundred-page state court record in *McIntyre II*). Repeated admonitions and the threat of sanctions both by this Court and the Court of Appeals have not deterred Connor from continuing to litigate in bad faith. *McIntyre II*, 2017 WL 1483572, at *6 ("In short, the Court is troubled by Connor's conduct in this litigation the Court will not impose sanctions at this time, should similar concerns arise if this matter is again before this Court, the Court will not hesitate to consider sanctions—whether on motion or on its own initiative"), (*see also* Fifth Cir. Mandate, Dkt 49, at 2 ("[A]ppellant, a lawyer representing herself pro se, is cautioned that any further prolongation of this case will likely result in additional sanctions"). The Court concludes that severe monetary sanctions are necessary to send the message to Connor that bad faith litigation brought for the purpose of harassment will not be tolerated, especially by an officer of the Court. Thus, this Court will assess the full cost of defending this suit against Connor.

In defending against Connor's baseless claims before this Court, Defendants incurred a total of \$28,646.50 in reasonable and necessary attorneys' fees and \$435.98 in expenses (Mot. Add Sanctions, Dkt. 60, at 6). In reviewing the submitted invoices, affidavit, and memorandum in support of this figure, the Court determines that both the work expended and the rates assessed are reasonable for the geographic area. Because Connor has not disputed the reasonableness of these sums and because the record demonstrates that "every facet" of Connor's third lawsuit was "patently meritless" and brought in bad faith for the improper purpose of harassing Defendants, (*see* Order, Dkt. 42, at 4-9), the Court concludes shifting the entire cost of the defense to Connor is appropriate pursuant to 28 U.S.C. § 1927.⁴ *See Procter & Gamble Co.*, 280 F.3d at 526. In addition to these monetary sanctions, the Court reminds Connor that a pre-filing injunction remains in place

Connor may not file a civil action against Defendants or other officers of the Lost Creek Municipal Utility District, directly or indirectly, in the Western District of Texas without receiving written leave from a federal district judge for this district. Any future complaint against Defendants or other officers of the Lost Creek Municipal Utility District in this district shall be accompanied by a motion for leave, and no summons shall issue unless leave is granted.

(Dkt. 42 at 9)

To echo the Court of Appeals, "[t]his case is over."

III. CONCLUSION

Accordingly, **IT IS ORDERED** that Defendants' Motion for Attorneys' Fees and Costs, (Dkt. 59), is **GRANTED**.



⁴ To the extent Connor's conduct is not covered by one of the other sanctioning provisions, this Court relies on its inherent power to impose attorneys' fees as a sanction for bad-faith conduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991) ("There is, therefore, nothing in the other sanctioning mechanisms or prior cases interpreting them that warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct. This is plainly the case where the conduct at issue is not covered by one of the other sanctioning provisions. But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules.")

IT IS FURTHER ORDERED that Defendants' Motion for Additional Sanctions, (Dkt 60),
is **GRANTED**

Defendants are entitled to an award of **\$13,636.50 in attorneys' fees, \$276.27 in expenses, and double costs in the amount of \$58.00** for the damages incurred in defending against Connor's frivolous appeal

Defendants are further entitled to **\$28,646.50 attorneys' fees and \$435.98 in expenses** incurred in defending this matter before this Court

SIGNED on January 27, 2020


ROBERT PITMAN
UNITED STATES DISTRICT JUDGE
A true copy of the original, I certify.
Clerk, U.S. District Court


Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded

RETURN

DENTON NAVRRO ROCHA BERNAL & ZECH,
P
2500 W WILLIAM CANNON DRIVE
SUITE 808
AUSTIN, TX 78746



2020021481

**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**



Dana DeBeauvoir, County Clerk
Travis County, Texas

Feb 10, 2020 02:09 PM

Fee: \$106.00

WELLNB

2020 - Values not available

Account

Property ID: 108378 Legal Description: LOT 14 BLK 4 LOST CREEK SEC 1
 Geographic ID: 0109280314 Zoning:
 Type: Real Agent Code:
 Property Use Code:
 Property Use Description:

Protest

Protest Status:
 Informal Date:
 Formal Date:

Location

Address: 6203 OLYMPIC OVERLOOK Mapco
 AUSTIN, TX 78746
 Neighborhood: N5200 Map ID: 011037
 Neighborhood CO: N5200

Owner

Name: CONNOR MADELEINE B Owner ID: 1739050
 Mailing Address: 6203 OLYMPIC OVERLOOK % Ownership: 100.0000000000%
 AUSTIN TX 78746 7229
 Exemptions: HS

(+) Improvement Homesite Value: + N/A
 (+) Improvement Non-Homesite Value: + N/A
 (+) Land Homesite Value: + N/A
 (+) Land Non-Homesite Value: + N/A Ag / Timber Use Value
 (+) Agricultural Market Valuation: + N/A N/A
 (+) Timber Market Valuation: + N/A N/A

(=) Market Value: = N/A
 (-) Ag or Timber Use Value Reduction: - N/A

(-) Appraised Value: = N/A
 (-) HS Cap: - N/A

(=) Assessed Value: = N/A

Owner: CONNOR MADELEINE B
 % Ownership: 100.0000000000%

Total Value: N/A

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
02	CITY OF AUSTIN	N/A	N/A	N/A	N/A
03	TRAVIS COUNTY	N/A	N/A	N/A	N/A
08	EANES ISD	N/A	N/A	N/A	N/A
0A	TRAVIS CENTRAL APP DIST	N/A	N/A	N/A	N/A
21	TRAVIS COUNTY HEALTHCARE DISTRICT	N/A	N/A	N/A	N/A
68	AUSTIN COMM COLL DIST	N/A	N/A	N/A	N/A
6P	LOST CREEK LIMITED DISTRICT	N/A	N/A	N/A	N/A
	Total Tax Rate:	N/A			

Taxes w/Current Exemptions: N/A

Taxes w/o Exemptions: N/A

Improvement #1: TEAM DOWLING State Code: 48 Living Area: 2022 (sqft) Value: 1,700

Type	Description	Class CD	Exterior Wall	Year Built	SQFT
11	1st Floor	WW 1		1976	1230.0
11	2nd Floor	WW 5		1976	623.0
11	PORCH DECK PATIO	WW 8		1976	110.0
11	CARAGE ATT 1ST F	WW 8		1976	371.0
11	TRAIL DISRUPTION	WW 8		1976	252.0
257	BATH ROOM	5		1976	10
257	CLO CLO CLOVER	8		1976	10.0
257	LOBBY	5		1976	10
257	REAR PORCH	8		1976	4.0

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	LAND	Land	0.3076	13400.00	0.00	0.00	N/A	N/A

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2020	N/A	N/A	N/A	N/A	N/A	N/A
2019	\$261,000	\$420,000	0	681,000	\$100	\$680,900
2018	\$199,000	\$420,000	0	619,000	\$0	\$619,000
2017	\$260,000	\$360,000	0	620,000	\$0	\$620,000
2016	\$435,374	\$210,000	0	645,374	\$11,677	\$633,697
2015	\$449,122	\$180,000	0	629,122	\$53,034	\$576,088

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	10/3/2017	WD	WARRANTY DEED	VANWISSE DEWITT	CONNOR MADELEINE B			2017160495
2	3/1/2013	WD	WARRANTY DEED	NCM ACQUISITIONS LLC	VANWISSE DEWITT			2013037759TR
3	12/4/2012	MS	MISCELLANEOUS	BAE KUM YEO	NCM			2012209519TR

2/28/2020

Travis CAD - Property Details

& KYEONG J
ACQUISITIONS
LLC

2020 - Values not available

Account

Property ID: 111538 Legal Description: LOT 5 BLK 7 LOST CREEK SEC 2
 Geographic ID: 0111280117 Zoning:
 Type: Real Agent Code:
 Property Use Code:
 Property Use Description:

Protest

Protest Status:
 Informal Date:
 Formal Date:

Location

Address: 6304 WHITEMARSH VLY WALK Mapco.
 TX 78746
 Neighborhood: N5200 Map ID: 011037
 Neighborhood ED: N5200

Owner

Name: CONNOR MADELINE G Owner ID: 1485660
 Mailing Address: 6203 OLYMPIC OVERLOOK % Ownership: 100.000000000000
 AUSTIN, TX 78746-7229

Exemptions:

(+) Improvement Homesite Value	+	N/A	
(+) Improvement Non-Homesite Value:	+	N/A	
(+) Land Homesite Value:	+	N/A	
(+) Land Non Homesite Value:	+	N/A	Ag / Timber Use Value
(+) Agricultural Market Valuation	+	N/A	N/A
(+) Timber Market Valuation:	+	N/A	N/A

(=) Market Value:	=	N/A
(-) Ag or Timber Use Value Reduction:	-	N/A

(-) Appraised Value:	=	N/A
(-) HS Cap:	-	N/A

(=) Assessed Value	=	N/A
--------------------	---	-----

Owner: CONNOR MADELINE G
 % Ownership: 100.000000000000

Total Value: N/A

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
02	CITY OF AUSTIN	N/A	N/A	N/A	N/A
03	TRAVIS COUNTY	N/A	N/A	N/A	N/A
08	EANES ISD	N/A	N/A	N/A	N/A
0A	TRAVIS CENTRAL APP DIST	N/A	N/A	N/A	N/A
27	TRAVIS COUNTY HEALTHCARE DISTRICT	N/A	N/A	N/A	N/A
68	AUSTIN COMM COLL DIST	N/A	N/A	N/A	N/A
6P	LOST CREEK LIMITED DISTRICT	N/A	N/A	N/A	N/A
	Total Tax Rate:	N/A			

Taxes w/Current Exemptions: N/A

Taxes w/o Exemptions: N/A

Improvement #1: 1 FARM DWELLING State Code: 41 Living Area: 2152.0 sqft Value: N/A

Type	Description	Class CD	Exterior Wall	Year Built	SQFT
11	1st Floor	WW		1981	2152.0
11	PORCH OPEN 1ST	11		1981	28.0
11	GARAGE ATT 1ST	WW		1981	574.0
11	HVAC RESIDENTIAL			1981	2152.0
11	BATHROOM	11		1981	2.0
12	DECK UNCOVERED	12		1981	193.0
12	DECK UNCOVERED	12		1981	40.0
22	FIREPLACE	22		1981	1.0
11	MASONRY TRIM M	11		1981	405.0
112	TERRACE UNCOVERED	112		1981	130.0
112	DECK UNCOVERED	112		1981	223.0
112	DECK UNCOVERED	112		1981	70.0

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	LAND	Land	0.3595	15660.00	116.00	135.00	N/A	N/A

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2020	N/A	N/A	N/A	N/A	N/A	N/A
2019	\$210,200	\$367,500	0	\$77,700	\$0	\$577,700
2018	\$238,597	\$367,500	0	\$66,097	\$0	\$606,097
2017	\$281,174	\$283,500	0	\$64,674	\$225,996	\$338,678
2016	\$331,818	\$165,375	0	\$97,193	\$189,304	\$307,889
2015	\$342,296	\$141,750	0	\$84,046	\$204,147	\$279,899

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	10/26/2007	DV	DIVORCE	CONNOR CABRACH J &	CONNOR MADELINE G			DV#D-1-FM-06-003296

2/26/2020

Travis CAD - Property Details

2	8/2/2002	WD	WARRANTY DEED	MADELEINE G ORTMAN THOMAS E	CONNOR CABRACH J & MADELEINE G	00000	00000	2002143357TR
1	3/15/1989	AD	ASSUMPTION DEED	ORTMAN THOMAS E & DANIEL ORTMA	ORTMAN THOMAS E	10942	00027	

Exhibit “B”

ELVA L. PRICE

District Clerk, Travis County

O. Box 679003

Austin, Texas 78767-9003

(2-854-9457



Received From:

Madeline B. Connor

f. Cause No.:

D-1- CN-15-003714

Received For:

Passport [] Photo [] Other [X]

f. Other:

Supervisor's Photo

Received By

Deputy District Clerk:

Sandy Cape

RECEIPT No. 00303

Date:

08/28/2020

Amount:

30,000

Payment Type:

Cash [] Check [X] M.O. [] Credit []

CASH : Amount of change returned

CHECK or M.O. #: 9230820220

Check or M.O.

D/L #

Information:

D.O.B.

Phone #

CREDIT CARD REF. #

Velva L. Price
District Clerk
Travis County
D-1-GN-15-003714
Alexus Rodriguez

No. D-1-GN-15-003714

DAVID McINTYRE, et al.,
Plaintiffs

vs.

ERIC CASTRO, et al.,
Defendants.

§
§
§
§
§
§

IN THE DISTRICT COURT

419TH JUDICIAL DISTRICT OF

TRAVIS COUNTY, TEXAS

SUPERSEDEAS

COMES NOW, Plaintiff Madeleine Connor, and files this her Supersedeas.

Pursuant to Texas Rule of Appellate Procedure 24 and Civil Practice & Remedies Code Chapter 52, Plaintiff Madeleine Connor, herewith files this deposit in lieu of bond.

1. The Western District of Texas signed an order on January 27, 2020, in cause number 1:17-cv-00827-RP [Dkt. 70];
2. The Defendants recorded the order referenced above on February 10, 2020;
3. On February 26, 2020, Plaintiff filed a notice of appeal to the order, which was an award of attorney's fees and sanctions;
4. The trial court's order awarded no compensatory damages or interest thereon; therefore, the amount of supersedeas required is \$ 0. *See In re Corral-Lerma*, 451 S.W.3d 385 (Tex. 2014); *Shook v. Walden*, 304 S.W.3d 910 (Tex. App.—Austin 2010), *overruled on other grounds*, 451 S.W.3d 385 (Tex. 2014);
5. Connor filed a supersedeas on February 26, 2020, but was unable to post a bond before the courthouse closed due to covid, and;
6. This document is resubmitted with the Travis County Clerk, with the sum of thirty-thousand dollars (\$30,000.00), as a deposit in lieu of bond. This amount should be sufficient to supersede all costs and amounts finally determined by appeal. See



attached. Ms. Connor intends to challenge this payment and the abstract of judgment that purports to allow execution on her non-exempt property by collateral attack.

Respectfully submitted,

/s/ Madeleine Connor

Madeleine Connor
SBOT # 24031897
P.O. Box 161962
Austin, Texas 78716-1962
(512) 289-2424
(512) 329-5229 (fax)
mgbconnor@yahoo.com

CERTIFICATE OF SERVICE

I certify that this instrument was served on the following persons on the 27th day of August, 2020: Lowell Denton and Scott M. Tschirhart, at the following email addresses: lowell.denton@rampage-sa.com, Scott.Tschirhart@rampage-aus.com.

/s/ David Rogers

David Rogers

Attorney for Madeleine Connor





Denton Navarro Rocha Bernal & Zech, P.C.
attorneys & counselors at law • rampagelaw.com

San Antonio | Austin | Rio Grande Valley | Texas Gulf Coast
2500 W. William Cannon Drive, Suite 609 | Austin, Texas 78745-5320
V 512-279-6431 | F 512-279-6438

June 5, 2020

Velva L. Price
Travis County District Clerk
P.O. Box 679003
Austin, Texas 78767-9003

E-FILE NOTIFICATION

Re: *In Re David McIntyre*
Cause No. D-1-GN-15-003714, in the 419th Judicial District Court, Travis County, Texas
Request to Writ of Execution

Dear Ms. Price:

Please process this request for re-issuance of a Writ of Execution by the Clerk. The Office of Travis County Constable, Precinct No. 3 was unable to serve the original Writ prior to its expiration as their office was closed due to COVID-19. Therefore, re-issuance is required.

The information below is to be stated on the writ:

CAUSE NO. D-1-GN-15-003714

In re DAVID McINTYRE,
Petitioner,

§
§
§
§
§
§

IN THE DISTRICT COURT OF

419th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

Attached is a copy of the *Order Granting Defendants' Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code* issued by the Honorable Judge Karin Crump on June 23, 2017 and file-stamped by your office on June 26, 2017. In the Order, Judge Crump awarded the following for the Defendants against Plaintiff Madeleine Connor, (jointly and severally with Plaintiff David McIntyre):

Serving all of Texas from our San Antonio, Rio Grande Valley, Austin and Texas Gulf Coast offices



Velva L. Price
Travis County District Clerk
June 5, 2020
2 | Page

Attorney's Fees:	\$ 2,124.00
Costs:	\$ 76.67
Sanctions:	\$ 500.00
Thirteenth Court of Appeals (unsuccessful)	\$15,000.00
Thirteenth Court of Appeals Costs	\$ 20.00
Texas Supreme Court (unsuccessful)	<u>\$10,000.00</u>
TOTAL:	\$27,720.67

Attached is a copy of the filed and recorded Abstract of Judgment for the aforementioned amount.

On January 27, 2020, United States District Judge Robert Pitman issued an Order in Cause No. 1:17-cv-00827; styled *Madeleine Connor v. Leah Stewart, Eric Castro and Chuck McCormick*, in the Western District of Texas-Austin Division. In his Order, Judge Pitman granted Defendants' their attorneys' fees, costs and additional sanctions against Plaintiff. The award is as follows:

Attorney's Fees for Appeal:	\$13,636.50
Costs for Appeal:	\$ 276.27
Double Costs (in Appeal costs)	\$ 58.00
Attorney's Fees for District lawsuit (sanctions):	\$28,646.50
Costs for District lawsuit (sanctions):	<u>\$ 435.98</u>
TOTAL:	\$43,053.25

Attached is copy of the filed and recorded Order (Abstract of Judgment).

Plaintiff Madeleine Connor, individually, owes Texas Municipal League Intergovernmental Risk Pool ("TMLIRP") by and through former Defendants Eric Castro, Nancy Naeve, Gary Sertich, Leah Stewart and Charles McCormick the **total sum of \$70,773.92**.

Creditor to be listed in the Writ of Execution is:

Texas Municipal League Intergovernmental Risk Pool by and through Defendants Eric Castro; Nancy Naeve; Gary Sertich; Leah Stewart; and Charles McCormick, as Subrogee.

Address:

Texas Municipal League Intergovernmental Risk Pool
c/o Denton Navarro Rocha Bernal & Zech, P.C.
2500 W. William Cannon, Suite 609
Austin, Texas 78745



Velva L. Price
Travis County District Clerk
June 5, 2020
3 | Page

Debtor to be listed in the Writ of Execution is:

Madeleine Connor

Mailing Address: P.O. Box 161962

Physical Addresses: 6203 Olympic Overlook, Austin, Texas 78746 and 6304 Whitemarsh Vly Walk, Austin, Texas 78746.

Driver's License Number: Unknown

Social Security Number: Unknown

Date of Birth: Unknown

Attached are Travis County CAD records for the properties at 6203 Olympic Overlook and 6304 Whitemarsh Vly Walk in Austin, Travis County, Texas. Debtor claims a homestead exemption on Olympic Overlook property.

Payment of the fee for the re-issuance of this Writ will be paid electronically with this request.

If additional information is needed, please contact our office at (512) 279-6431.

Very truly yours,

Denton Navarro Rocha Bernal & Zech, P.C.
attorneys & counselors at law • rampagelaw.com



SCOTT M. TSCHIRHART
smtschirhart@rampagelaw.com

SMT/ha
Enclosures: As stated

cc: David Rogers
Law Office of David Rogers
595 Round Rock West Drive, Suite #102
Round Rock, Texas 78681

E-FILE NOTIFICATION

RETURN TO: Denton Navarro Rocha Bernal & Zech, P.C.
Attn: Scott M. Tschirhart
25000 W. William Cannon Drive, Suite 609
Austin, Texas 78745





2 pgs

2019188751

THE STATE OF TEXAS
County of Travis

CAUSE NO. D-1-GN-15-003714

A B S T R A C T O F J U D G M E N T

I, **VELVA L. PRICE**, Clerk of the District Court of TRAVIS County, Texas, do hereby certify that in the District Court of Travis County, Texas, in a certain suit pending in the 419TH JUDICIAL DISTRICT COURT.

D-1-GN-15-003714, wherein

DAVID MCINTYRE AND MADELEINE CONNOR
and

, Plaintiff(s)

ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH STEWARD, CHARLES MCCORMICK,
TOM CLARK AND JANE/JOHN DOE 1, 2, AND 3, WHOSE BIRTH DATES, SOCIAL SECURITY
NUMBERS AND DRIVER'S LICENSE ARE NOT AVAILABLE TO THE CLERK

, Defendant(s)

the said

ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH CHARLES MCCORMICK AND JANE/JOHN DOE 1, 2,
AND 3

BY AND THROUGH THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL
C/O DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.
3500 W. WILLIAM CANNON, STE. 609
AUSTIN, TEXAS 78745

recovered judgment against the said

DAVID MCINTYRE
6201 AUGUSTA NATIONAL DRIVE
AUSTIN, TEXAS 78746

AND

MADELEINE CONNOR
6203 OLYMPIC OVERLOOK
AUSTIN, TEXAS 78746

AND

6304 WHITEMARSH VLY WALK
AUSTIN, TEXAS 78746

on the JUNE 23, 2017 JOINLY AND SEVERALLY for the sum of TWENTY-SEVEN THOUSAND SEVEN HUNDRED AND
67/100 DOLLARS (\$27,700.67).

Said judgment is entitled to following credits, to-wit: NONE.

There is now still due on said judgment \$27,700.67, with interest as hereinabove set out.Given under my hand and seal of office at Austin, Texas, December 02, 2019.

Velva L. Price
Velva L. Price
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

PREPARED BY: CARRISA ESCALANTE

D-1-GN-15-003714

☒ Original☐ File Copy

P46 - 000001176





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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MADELEINE CONNOR,

Plaintiff,

v

1:17-CV-827-RP

LEAH STEWART,
ERIC CASTRO, and
CHUCK MCCORMICK,

Defendants

ORDER

Before the Court are Defendants Leah Stewart, Eric Castro, and Chuck McCormick's (collectively, "Defendants") Amended Motion for Attorneys' Fees, (Dkt. 59), and Motion for Additional Sanctions, (Dkt. 60). Having considered the parties' briefing, the record, and the relevant law, the Court will grant both motions.

I. BACKGROUND

Plaintiff Madeleine Connor ("Connor") lives in the Lost Creek Municipal Utility District ("Lost Creek") and Defendants Leah Stewart, Eric Castro, and Chuck McCormick (collectively, "Defendants") are all directors of Lost Creek (Compl., Dkt. 1, at 1-2). Connor has now sued Defendants three times in this Court for the same cause of action. *See McIntyre v. Castro*, No. 1:15-CV-1100 RP, 2016 WL 1714919, at *4 (W.D. Tex. Apr. 8, 2016), *aff'd*, 670 F. App'x 250 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016) ("McIntyre I"), *McIntyre v. Castro*, No. 1:16-CV-490 RP, 2017 WL 1483572, at *3 (W.D. Tex. Apr. 25, 2017), *aff'd in part sub nom. Connor v. Castro*, 719 F. App'x 376 (5th Cir. 2018) ("McIntyre II"), *Connor v. Stewart*, No. 1:17-CV-827-RP, 2018 WL 2994644, at *1 (W.D. Tex. June 14, 2018), *aff'd*, 770 F. App'x 244 (5th Cir. 2019). In all three cases, the Court determined



that Connor's claims were not well-grounded in law or fact and dismissed Connor's lawsuits for failure to state a plausible claim for relief. *See id.*

In *McIntyre I*, Connor alleged that Defendants sent a "pejorative" email with "evil intent" to Lost Creek residents "purporting to be an 'update' about" a lawsuit she filed against Defendants (*McIntyre I*, Compl., Dkt. 5, at 1). Upon reviewing the email, the Court determined that it was not pejorative, but rather that it "simply state[d] the basis of Plaintiffs' claims and that Defendants rebut them." *McIntyre I*, 2016 WL 1714919, at *4. The Court dismissed Connor's claim, holding that her allegations fell "well short of supporting a claim for First Amendment retaliation." *Id.* Connor appealed. The United States Court of Appeals for the Fifth Circuit ("Court of Appeals") affirmed the Court's opinion, specifically finding that Connor's allegations did "not constitute retaliation." *McIntyre v. Castro*, 670 F. App'x 250, 251 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016).

One week after the Court issued its order in *McIntyre I*, and while her appeal remained pending, Connor sued Defendants again (*See McIntyre II*, Notice of Removal, Dkt. 1, at 3). Connor's *McIntyre II* complaint—her seventh amended petition in state court—alleged a First Amendment retaliation claim "nearly identical" to her claim in *McIntyre I*. *McIntyre II*, 2017 WL 1483572, at *4. The Court again dismissed the claim. *Id.* Connor then moved to amend her complaint to add another First Amendment retaliation claim, the Court denied her motion. *Id.* at *6. Connor appealed that decision. *Connor v. Castro*, 719 F. App'x 376, 379 (5th Cir. 2018). The Court of Appeals affirmed this Court's decision, agreeing that it would have been futile to permit her to add the claim. *Id.* at 380.

In *McIntyre II*, the Court found that the record gave "the impression that the current litigation may be motivated as much or more by animosity between Connor and the Defendants

¹ There were two named plaintiffs in *McIntyre I* and *McIntyre II*—Madeleine Connor and David McIntyre. *See McIntyre I*, 2016 WL 1714919, *McIntyre II*, 2017 WL 1483572.



than any legally cognizable injury Plaintiffs may have suffered ” *McIntyre II*, 2017 WL 1483572, at *6. The Court stated that Connor’s conduct, which included her “presentation of an objectively benign e-update as defamatory,” was troubling. *Id.* In continuing “to engage in motion practice to add allegations that [were] plainly insufficient”—particularly in light of this Court’s prior order, which was subsequently affirmed by the Court of Appeals—this Court found that her conduct fell “well short of what this Court expects of its officers ” *Id.* While the Court declined to sanction Connor at that time, it warned her it would “not hesitate to consider sanctions—whether on motion or on its own initiative” should Connor continue to litigate this issue in the future. *Id.*

Despite that warning, Connor filed a third lawsuit in this Court, again alleging a First Amendment retaliation claim on the basis of an objectively benign litigation update (Am. Compl., Dkt. 8, at 2). In doing so, she repeated a claim that had been twice rejected by this Court and once by the Court of Appeals. *McIntyre I*, 2016 WL 1714919, at *4; *McIntyre II*, 2017 WL 1483572, at *4; *McIntyre v. Castro*, 670 F. App’x 250, 251 (5th Cir. 2016), *reh’g denied* (Dec. 9, 2016). Her only new theory of retaliation—that Defendants intended to punish her by filing a valid defensive motion in a lawsuit that she brought against them—was one the Court determined Connor, a lawyer, should understand to be frivolous (Order, Dkt. 31, at 10). Again, this Court dismissed Connor’s action as meritless (*Id.*).

In dismissing Connor’s third baseless lawsuit, this Court recited her history of vexatious litigation and found that Connor filed the action for “the improper purpose of harassing and imposing litigation costs on Defendants ” (*Id.*). The Court determined that the appropriate Rule 11 sanction was to require Connor to pay Defendants’ reasonable attorneys’ fees and expenses related to this action (*Id.* at 11). The Court then ordered Defendants to submit a motion for reasonable attorneys’ fees and expenses (*Id.* at 12). Concluding that a pre-filing injunction might be appropriate to deter Connor from using the courts “as a weapon of harassment” against the Defendants, the



Court also ordered the parties to attend a hearing to consider the proper scope of a pre-filing injunction (*Id.* at 8, 12)

Pursuant to the Court's order, Defendants filed a motion requesting \$16,235.16 in reasonable attorneys' fees and expenses (Mot. Att'y Fees, Dkt. 32, at ¶ 18). The Court ultimately denied Defendants' motion because they failed to comply with Rule 11's safe harbor provision (Order, Dkt. 42, at 3). However, after giving Connor the required notice and hearing, (Dkt. 31, 40), the Court imposed a pre-filing injunction against Connor *sua sponte*, barring her from filing any civil action "against Defendants or other officers of the Lost Creek Municipal Utility District, directly or indirectly, in the Western District of Texas without receiving written leave from a federal district judge for this district" (Order, Dkt. 42, at 9).

Connor appealed that order (Dkt. 44). Her appeal was dismissed because she didn't timely file her brief (Dkt. 47). The Fifth Circuit subsequently reinstated her appeal (Dkt. 48). The Fifth Circuit then affirmed this Court's order without an opinion (Dkt. 50, Ex. S). She petitioned for rehearing by the panel. (*Id.* at Ex. T). After nearly a year of defending the appeal, Defendants then filed a motion for appellate sanctions (*Id.* at Ex. U). In that motion, Defendants expressly argued that Connor's entire appeal was frivolous and sought sanctions pursuant to Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1912. (Dkt. 50, at 1 ("Now come Appellees, Leah Stewart, Eric Castro and Chuck McCormick and file their Motion for Sanctions pursuant to Federal Rule of Appellate Procedure 38", "The current appeal is frivolous on its face in that Appellant makes the same arguments that have been previously rejected by the trial court and this honorable Court", "[T]his Court [should] remand this case to the district court 'to determine the amount of costs and damages to be paid to appellees, as provided by 28 U.S.C. § 1912'"))

The Court of Appeals granted Defendants' motion and remanded to the district court "to determine the amount of costs and damages to be paid to appellees, as provided by 28 U.S.C.



§ 1912” (Dkt 49 at 1) The Court of Appeals further cautioned Connor, “a lawyer representing herself pro se,” that “any further prolongation of this case will likely result in additional sanctions” (*Id* at 2) Except for “the determination of costs and sanctions by the district court on remand,” the Court of Appeals stated, in all caps, “THIS CASE IS OVER” (*Id*)

On remand, Defendants filed two motions for attorneys’ fees and costs, (Dkt 50, 53), neither of which complied with this Court’s Local Rules WD Tex Loc R CV-7(j)(1) The Court ordered Defendants to properly confer with Connor and file an amended motion for attorneys’ fees, costs, and sanctions that adhered to the local rules (Order, Dkt 56, at 2) The Court further ordered the parties to “advise the Court what other sanctions, if any, they believe to be appropriate” (*Id* at 1) Defendants then filed an Amended Motion for Attorneys’ Fees, (Dkt. 59), and a Motion for Additional Sanctions, (Dkt 60) Those motions are now before the Court, (Mot Att’y Fees, Dkt 59, Mot. Sanctions, Dkt 60) First, the Court will turn to Defendants’ Motion for Attorneys’ Fees, (Dkt 59), which requests attorneys’ fees, costs, and expenses incurred defending against Connor’s appeal Second, the Court will address Defendants’ Motion for Additional Sanctions, (Dkt. 60), which requests sanctions in the form of attorneys’ fees incurred defending this lawsuit before this Court

II. DISCUSSION

A. Motion for Attorneys’ Fees, Costs, Expenses

Pursuant to the Court of Appeals’ mandate, Defendants seek \$13,636.50 in attorneys’ fees, \$276.27 in expenses, and double costs in the amount of \$58.00 for damages incurred in defending against Connor’s appeal from October 1, 2018, the date Connor filed her Notice of Appeal, (Dkt 44), and June 21, 2019, the date the Court of Appeals granted Defendants’ motion for sanctions and remanded to the District Court for a determination of the amount of costs and damages, (Dkt 49) (Mot Att’y Fees, Dkt 59, at 4–5)



Connor contends that the Court should deny Defendants' request for attorneys' fees and costs because it "does not comply with this District's rule concerning the form, content, timeframe, or conference provisions of a request for attorney's fees" (Pl's Resp, Dkt 61, at 2 (citing W D Tex Loc R CV-7(j)(1)-(3))). Alternatively, Connor asks that the Court limit Defendants' fees and costs to those associated with the delay caused by her filing a motion for rehearing rather than awarding Defendants the fees and costs accrued in defending against the appeal as a whole (*Id.* at 12). The Court finds both of these arguments lacking and discusses each of them in turn below.

1 Defendants' Motion Complies with the Local Rules

Connor contends that Defendants' motion for attorneys' fees should be denied—"save perhaps double costs, which 28 U.S.C. § 1912 permits, presumably without any form of motion being timely and compliantly filed"—because it does not comply with Local Rule CV-7(j). On this point, Connor makes three arguments. First, she contends that Defendants did not satisfy the "meet and confer" requirement under the local rules because "Defendants' counsel refused to have any substantive discussions with Plaintiff regarding their request for fees and sanctions and walked out of the conference after the passage of only fifteen minutes" (Dkt 61 at 3–5). Second, she argues that Defendants' motion did not certify her specific objections to Defendants' requested attorneys' fees, objections she alleges she could not specifically articulate "because only an oral number was proposed, with no detail" (Dkt 61 at 6). Third, Connor contends that while Defendants' motion includes a billing document, it does not comply with the drafting and certification requirements, specifically, she argues that attaching a 22-page billing statement without "a more easily readable table" skirts the simplicity the local rules "seem to encourage" (*Id.*)

The Court concludes that Defendants' motion properly complies with the local rules. *See* W D Tex Loc R CV-7(j). It is undisputed that Defendants' counsel met in person with Connor on July 30, 2019 to discuss their intention to seek attorneys' fees (*See* Pl's Resp, Dkt 61, at 4). During



that meeting, Defendants "repeatedly asked" for Connor's objections to the fee amount, but Connor only offered a specific objection to one eight-hour billing entry (Defs' Reply, Dkt 59, at 6). Defendants noted this objection in their motion and properly "certified the reason why the matter could not be resolved by agreement" W D Tex. Loc. R. CV-7(j), (*see also* Mot. Att'y Fees, Dkt 59, at 5-7 ("The parties could not reach an agreement because Plaintiff offered [an amount] inconsistent with Defense counsel's authority")). And Rule 7(j) imposes no time requirement for a conference. *See* W D Tex. Loc. R. CV-7(j). From the Court's perspective, fifteen minutes is sufficient to entertain that single objection.

Moreover, Connor's contention that she "could not articulate a specific objection" to "an oral request for \$40,000" because Defendants tendered the fee-bill to her "only 30 minutes before the meeting convened" is a flagrant misrepresentation of the facts (Pl.'s Resp., Dkt 61, at 5). Defendants provided statements and draft bills with their Motion for Attorneys' Fees and Costs pursuant to the order from the Court of Appeals, (Dkt 49), on June 25, 2019 (Orig. Mot. Att'y Fees, Dkt. 50). Defendants emailed Connor with an updated set of statements on July 24, 2019, a full six days before the conference (Email, Dkt 63-1, at 1). In that same email, Defendants' counsel expressly indicated that Defendants intended to seek attorneys' fees and costs incurred for the entire appeal and additional sanctions in the form of attorneys' fees and costs related to the rest of the case (*Id.* at 1). Connor had the time and the information necessary to formulate her objections ahead of the conference and did not do so. She cannot now misrepresent the record to manufacture noncompliance with the local rules in an attempt to evade sanctions.

Connor's argument that Defendants' motion should be denied because it "does not comply with the drafting and certification requirements of the rule" is likewise baseless (Pl.'s Resp., Dkt 61, at 6). Defendants' motion contains the requisite chronological billing activity, affidavit, and memorandum setting forth the method by which fees were computed. W D Tex. Loc. R. CV-



7(j) There is no requirement that a movant for reasonable attorneys' fees include "a more easily readable table," (Pl's Resp, Dkt 61, at 6), billing records provide sufficient support for the legal services rendered by Defendants in defending this action. *People's Capital & Leasing Corp. v McClung*, No 5:17-cv-484-OLG, 2018 WL 7291447, at *2 (W.D. Tex. Aug. 20, 2018) ("Plaintiff's attorney's fees request is properly supported by copies of the invoices for legal services.") Moreover, Defendant's counsel attested to the reasonableness of these rates in an affidavit attached to the motion (Tschirhart Aff, Dkt. 59-2, at 1-2), W.D. Tex. Loc. R. CV-7(j).

Thus, the Court concludes that Defendants' Motion for Attorneys' Fees complies with the local rules and Connor's arguments to the contrary are, predictably, without merit. The Court will now turn to Connor's next argument pertaining to the scope of the Court of Appeals' mandate.

2. Defendants are Entitled to Fees and Costs for the Entire Appeal

Connor contends that Defendants' request for attorneys' fees and costs incurred for the entire appeal should be denied because the Court of Appeals "rejected" Defendants' "repeated requests in the appellate court to award fees and sanctions for frivolous appeal" (Pl's Resp, Dkt 61, at 8). In support of this argument, Connor cites to the text of the Court of Appeals' order, which she notes omits the words "frivolous" and "Rule 38" and cites only to 28 U.S.C. § 1912. *Id.* Connor interprets these omissions to mean the Court of Appeals denied Defendants' request for sanctions pursuant to Rule 38 and instead limited the scope of sanctions on remand to the delay associated with Connor's decision to file a motion for panel rehearing (*Id.*)

Under Federal Rule of Appellate Procedure 38, "[i]f a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Meanwhile, 28 U.S.C. § 1912 provides that "[w]here a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and



single or double costs ” 28 U S C § 1912. Importantly, the rule—unlike the statute—allows a court to order damages and costs for a frivolous appeal without finding that the appeal resulted in delay. See Fed R App P 38 advisory committee notes to 1967 adoption, *see also State of Tex. v. Gulf Water Benefaction Co.*, 679 F 2d 85, 87 n 1 (5th Cir 1982), *Hagerty v. Succession of Clement*, 749 F 2d 217, 222 (5th Cir 1984) (“[T]he courts of appeals quite properly allow damages, attorney’s fees and other expenses incurred by an appellee if the appeal is frivolous without requiring a showing that the appeal resulted in delay.”) An award of damages and double costs as sanctions for the filing of a frivolous appeal “may be made against an appellant under 28 U S C § 1912 and Fed R App P 38.” *Olympia Co. v. Celotex Corp.*, 771 F 2d 888, 893 (5th Cir 1985). Thus, if a frivolous appeal results in delay, courts may use Rule 38 and 28 U S C § 1912 interchangeably. See *Exhibitors Poster Exch., Inc. v. Nat’l Screen Serv. Corp.*, 78 F.R.D. 192, 195 (E.D. La. 1978).

Having reviewed the Court of Appeals’ order and the appellate record as a whole, the Court concludes that it may determine costs and damages related to the entire appeal; that is, the Court of Appeals’ mandate does not limit apportionable damages to the delay associated with Connor’s motion for panel rehearing. As an initial matter, the Court of Appeals *granted* Defendants’ motion for appellate sanctions. (See Fifth Cir Order, Dkt 49, at 1 (“**IT IS ORDERED** that appellees’ motion for sanctions, attorney fees, and costs is **GRANTED**.”)) Defendants based their appellate motion for sanctions on the frivolousness of Connor’s entire appeal, not on the delay associated with her filing a motion for panel rehearing (Defs’ App Mot Sanctions, Dkt 50, Ex U, at 2 (“[T]he current appeal is frivolous on its face in that Appellant makes the same arguments that have been previously rejected by the trial court and this honorable Court.”) Throughout the motion, Defendants specifically argued for sanctions pursuant to Rule 38, cited cases pertaining to frivolous appeals within the purview of Rule 38, and sought relief pursuant to Rule 38 (See *id.* (“Sanctions under Rule 38 are appropriate”), *id.* (citing cases pertaining to sanctions imposed pursuant to Rule



38), *id* at 6 ("For the foregoing reasons, this Court should find that Appellant's arguments are frivolous, that sanctions under Fed R App P 38 are warranted, that Appellees have incurred attorneys' fees and expenses as a result of Appellant's frivolous litigation.") Even Connor concedes that the appellate motion "largely" "requests sanctions and damages pursuant to Rule of Appellate Procedure 38, and only requests relief under 28 U S C § 1912 on the final page" (Resp, Dkt 61, at 7). Thus, granting Defendants' motion *was* a finding that Connor's appeal was frivolous.

Connor's textual argument is therefore unavailing. While the Court of Appeals' order does "remand this case to the district court to determine the amount of costs and damages to be paid to appellees, as provided by 28 U S C § 1912," courts often use Rule 38 and 28 U S C § 1912 interchangeably when the appeal is frivolous and resulted in delay. *Exhibitors Poster Exch, Inc v Nat'l Screen Serv. Corp.*, 78 F R D 192, 195 (E D La 1978) ("Various courts have referred to and utilized F R A P 38 and 28 U S C § 1912 interchangeably", *see also Exhibitors Poster Exch., Inc. v. Nat'l Screen Serv. Corp.*, 543 F 2d 1106, 1107 (5th Cir 1976) ("The appellees have filed in this Court a motion for damages for frivolous appeal under Rule 38, F R A P. The motion is well taken. We remand this case to the district court to determine the amount of costs and damages to be paid to the appellees, as provided by 28 U S C. § 1912"); *Olympia Co. v. Celotex Corp.*, 771 F 2d 888, 892-93 (5th Cir 1985) (noting that an award of damages and double costs for the filing of a frivolous appeal "may be made against an appellant under 28 U S C. § 1912 and Fed R App P 38"). This is especially so when the appeal has resulted in delay, indeed, the only reason to distinguish between the statutory basis for sanctions and the rule would be if the Court of Appeals intended to award sanctions for a frivolous appeal without making a finding that the appeal resulted in delay. *See* Fed R App P 38 advisory committee's note to 1967 adoption.

Finally, in citing to § 1912, the Court of Appeals did not limit the scope of sanctions to the delay associated with Connor's filing of a motion for panel rehearing, as she contends. Nothing in



Defendants' motion for appellate sanctions, which the Court of Appeals granted, limits the requested relief to the delay associated with one portion of Connor's appeal and nothing in the Court of Appeals' order imposes such a limitation either (*See* Defs' Mot App Sanctions, Dkt 50, Ex. U, 5th Cir Order, Dkt 49, at 1-2) For nearly a year, Connor prosecuted a meritless appeal with no legitimate prospect of success After filing her Notice of Appeal, (Dkt 44), she ignored the transcript order deadline, (Dkt 50, Ex A), waited six days after the Clerk sent her an email about missing the deadline to request more time, (*id.* at Ex. C), delayed ordering the transcript again, (*id.* at Ex D), moved for a fifteen-day extension to file her appellate brief, (Dkt 50, Ex F), and then filed for another extension the day before her brief was due, (Dkt 50 at Ex G) When the Court of Appeals denied Connor's motion for an extension, (Dkt 50 at Ex I), Connor filed a motion to reconsider arguing that "in seventeen years of practice, she had never personally been denied an extension of time to file an opening brief " (Dkt 50, Ex J) The Court of Appeals denied her motion and dismissed her appeal for want of prosecution shortly after (Dkt 50, Ex K, L) Then, Connor filed two additional motions, which the Court of Appeals took no action on because it had dismissed her appeal (Mot Attorneys' Fees, Dkt 50, at 4) Connor then filed a motion to reopen the appeal (Dkt 50, Ex O)

The Court of Appeals granted her motion and reinstated her appeal (Dkt 50, Ex Q) After considering Connor's arguments on appeal, the Court of Appeals then affirmed this Court's order without an opinion (Dkt 50, Ex S) In an attempt to further prolong meritless litigation, Connor filed a petition for panel rehearing (Dkt 50, Ex T) At this point, after almost a year of investing time and resources into defending against Connor's various delay tactics, Defendants filed a motion for appellate sanctions, which the Court of Appeals granted. (Dkt 50, Ex. U)

Because Connor's frivolous appeal resulted in nearly a year of delay, the Court of Appeals remanded to the District Court for a determination of costs and damages pursuant to § 1912. *See*



Fed R App P 38 advisory committee's note (explaining that Rule 38 and § 1912 can be used interchangeably, the only difference being that § 1912 requires a showing of delay) And the appellate record makes clear that Connor delayed prompt adjudication of this dispute throughout the entire appeal

Finding no reason to limit the scope of sanctions to the attorneys' fees and costs associated with Connor's motion for panel rehearing, the Court will assess against Connor the attorneys' fees and costs incurred by Defendants in defending against the entire frivolous appeal.

1. Attorneys' Fees

Defendants contend that from October 1, 2018 (the date Connor filed her Notice of Appeal) through June 21, 2019 (the date the Court of Appeals issued its mandate) they incurred \$13,636.50 in reasonable and necessary attorneys' fees and \$276.27 in expenses defending against Connor's frivolous appeal (Mot Sanctions, Dkt 59, at 5). As supporting documentation, Defendants submit an affidavit from Defendants' counsel of record and detailed billing records (Tschurhart, Dkt 59-2, at 1-2, Invoices, Dkt. 59-3, at 1-18). Defendants' request for attorneys' fees is based on the following rates: \$195 (later \$210) per hour for Partners, \$175 (later \$180) per hour for Senior Associates, and \$75 (later \$85) for paralegal time (Tschurhart Aff, Dkt 59-2, at 1). Defendants' memorandum notes that these fees "are based upon a bargained-for agreement" and represent "the same fees commonly charged for this kind of work by our Firm all over the State of Texas" (Defs' Fee Calculation Memo, Dkt. 59-4, at 2).



The Court finds that the attorneys' fees requested are reasonable in light of the well-known *Johnson* factors.² *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989). In defending against Connor's appeal, Defendants' counsel spent nearly a year reviewing and drafting responses to Connor's various requests for extensions of time and other obstinate efforts to deny Defendants a prompt resolution of the dispute (*See e.g.* Invoice, Dkt. 59-3, at 8-17). Upon examining Defendants' detailed records, the Court finds the time and labor documented to be reasonable in light of the issues involved and the skill required. *See id.* Moreover, the fees charged for the services are consistent with fees charged for such services in the geographic area amongst lawyers with similar experience, reputation, and ability. *See id.* Finally, Connor has not challenged the requested rates and fees; her response to Defendants' attorney's fees motion only contests compliance with W.D. Tex. Loc. R. CV-7(j) and the scope of the Court of Appeals' mandate.³ While she proffers her own attorneys' fee offer—\$525.00—she does not explain why Defendants' requested rates and fees, supported by invoices, affidavits, and memorandum, are unreasonable. Thus, the Court concludes that Defendants are entitled to the \$13,636.50 in requested attorneys' fees and \$276.27 in requested expenses.

² The *Johnson* factors are (1) the time and labor required to represent the client or clients, (2) the novelty and difficulty of the issues in the case, (3) the skill required to perform the legal services properly, (4) the preclusion of other employment by the attorney, (5) the customary fee charged for those services in the relevant community, (6) whether the fee is fixed or contingent, (7) the time limitations imposed by the client or circumstances, (8) the amount involved and results obtained, (9) the experience, reputation, and ability of the attorney, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989).

³ While Connor objected to one billing entry when the parties met to confer, Defendants "adjusted that particular entry, in response to [Connor's] objection, by reducing it accordingly." (Defs.' Reply, Dkt. 63, at 4), and Connor's Response in Opposition to Defendants' Motion for Attorneys' Fees and Costs, (Dkt. 61), does not raise objections with respect to the requested rates and fees, only to the manner in which these rates and fees were discussed. *See* Pl.'s Resp., Dkt. 61, at 3-4 (objecting to Defendants' "global request for \$40,000" as noncompliant with the meet and confer requirements under W.D. Tex. Loc. R. CV-7(j), but raising no other specific objections to the rates and fees incurred).



n. Costs

The Court of Appeals also remanded this case for a determination of costs (*See* Fifth Cir, Mandate, Dkt 49, at 1) "Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs " 28 U S C § 1912 Federal Rule of Appellate Procedure 38 likewise allows for "just damages and single and double costs to the appellee" when an appeal is frivolous *Garza v. Westergren*, 908 F 2d 27, 29 (5th Cir 1990) ("[A]n award of attorney's fees and double costs pursuant to Federal Rule of Appellate Procedure 38 is proper, because this appeal is frivolous ") Defendants submitted a Bill of Costs to the Court of Appeals in the amount of \$29 40 in taxable costs, (Bill of Costs, Dkt 50, Ex W, at 166), and ask the Court to award double costs in the amount of \$58 00 (Mot Att'y Fees, Dkt 59, at 3-5)

The Court concludes that this case is a textbook example of a scenario where double costs are warranted Here, Connor's appeal was not only frivolous, but also resulted in significant delay For nearly a year, Connor prolonged unmeritorious litigation, with no legitimate prospect of success In continuing to litigate a meritless appeal and leaving no delay tactic unturned, Connor "imposed an unnecessary burden on [the Court of Appeals] and has infringed on the rights of the appellees who are entitled to a prompt adjudication of this dispute." *Hagerty v. Succession of Clement*, 749 F 2d 217, 222 (5th Cir 1984) Accordingly, the Court determines that Defendants' request for double costs in the amount of \$58 00 is warranted (*See* Dkt 59, at 5)

B. Motion for Additional Sanctions

In response to this Court's order, (Dkt 56), Defendants filed a motion requesting additional sanctions in the form of "all of the attorneys' fees and costs incurred by Defendants in the proceedings before this honorable court " (Mot Add. Sanctions, Dkt 60, at 2) In the alternative, Defendants ask the Court to sanction Connor by "entering an Order temporarily disbar[ri]ng [her]



from the practice of law before the Courts in the Western District of Texas for a period of not less than six (6) months” (*Id.* at 2–3). Ultimately, Defendants just want the Court to “fashion a sanction that would deter [Connor] from continuing to use the [c]ourts as a weapon of harassment against them and those who are connected with them.” (*Id.* at 2). Defendants provide two possible bases for additional sanctions. First, Defendants contend that Connor, a licensed attorney, could be sanctioned pursuant to 28 U.S.C. § 1927. Second, Defendants contend the Court can sanction Connor pursuant to its inherent authority.

Connor argues that this Court lacks the authority to issue additional sanctions because the Court of Appeals’ remand order only allows for an assessment of fees for delay under 28 U.S.C. § 1912, which Connor isolates to fees accrued by the Defendants after she filed a motion for panel rehearing (Pl.’s Resp., Dkt. 62, at 2). She argues that on remand a trial court cannot deviate from the mandate of the appellate court and that the Court of Appeals’ mandate requires this Court to assess fees only for delay under 28 U.S.C. § 1912 (*Id.*).

As previously discussed, the Court finds nothing in the text of the Court of Appeals’ remand order that limits sanctions to the delay associated with Connor’s motion for panel rehearing. *See infra* Part II A 2. Moreover, the Court of Appeals’ mandate covers appellate sanctions and says nothing about this Court’s power to sanction Connor for her unreasonable and vexatious conduct before this Court. Because the pre-filing injunction imposed by this Court, (Order, Dkt. 42, at 9), has not deterred Connor from continuing to harass Defendants with unmeritorious litigation—both in this Court and others—the Court will assess additional monetary sanctions against Connor.

1 Sanctions pursuant to 28 U.S.C. § 1927

Under 28 U.S.C. § 1927, “[a]ny attorney who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” To impose sanctions



pursuant to this provision, the conduct multiplying the proceedings must be both “unreasonable” and “vexatious.” *Morrison v Walker*, 939 F 3d 633, 637–38 (5th Cir 2019) “Conduct is ‘unreasonable and vexatious’ if there is evidence of the ‘persistent prosecution of a meritless claim’ and of a ‘reckless disregard of the duty owed to the court.’” *Id.* “An attorney acts with “reckless disregard” of [her] duty to the court when [s]he, without reasonable inquiry, advances a baseless claim despite clear evidence undermining [her] factual contentions.” *Id.* at 638

In support of § 1927 sanctions, district courts often rely on “repeated filings despite warnings from the court, or other proof of excessive litigiousness, to support imposing sanctions.” *Procter & Gamble Co v Amway Corp.*, 280 F 3d 519, 525 (5th Cir 2002) Before imposing such sanctions, the court must “make detailed factual findings,” including “(1) identifying the sanctionable conduct as distinct from the case’s merits, (2) linking the sanctionable conduct and the sanction’s size, and (3) identifying the legal basis for each sanction” *Morrison*, 939 F 3d at 638 “To shift the entire cost of defense, the claimant must prove, by clear and convincing evidence, that *every facet* of the litigation was patently meritless, and counsel must have lacked a reason to file the suit and must wrongfully have persisted in its prosecution through discovery, pre-trial motions, and trial.” *Procter & Gamble Co.*, 280 F 3d at 526 (emphasis in original)

For the reasons stated below, the Court concludes that Connor’s conduct in filing and persistently litigating this lawsuit unreasonably and vexatiously multiplied the proceedings against Defendants and sanctions are thus warranted under § 1927

Reasonableness

This is Connor’s third, meritless First Amendment retaliation lawsuit before this Court. In bringing this latest lawsuit, Connor knew that this Court had twice dismissed—and the Court of Appeals had previously affirmed dismissal of—Connor’s nearly identical claims. See *McIntyre v. Castro*, No. 1:15-CV-1100 RP, 2016 WL 1714919, at *4 (W.D. Tex. Apr. 8, 2016), *aff’d*, 670 F. App’x 250



(5th Cir 2016), *reh'g denied* (Dec 9, 2016) ("*McIntyre I*"), *McIntyre v. Castro*, No. 1:16-CV-490 RP, 2017 WL 1483572, at *3 (W.D. Tex. Apr. 25, 2017), *aff'd in part sub nom. Connor v. Castro*, 719 F. App'x 376 (5th Cir. 2018) ("*McIntyre II*"). By filing this third lawsuit, Connor persistently prosecuted a meritless claim and thus unreasonably multiplied proceedings that should have concluded with the resolution of *McIntyre I*.

ii. Vexatiousness

To impose sanctions pursuant to § 1927, counsel's multiplication of proceedings must be not only unreasonable, but also vexatious. *See Morrison*, 939 F.3d at 637–38. The Court concludes that Connor vexatiously multiplied the proceedings in reckless disregard of the duty owed to this Court. *See id.* This Court's dismissal of *McIntyre I* put Connor on notice that claims for First Amendment retaliation based on a benign litigation status update were meritless. *See McIntyre I*, 2016 WL 1714919, at *4. *McIntyre II* did not remedy these deficiencies and this Court admonished Connor's decision to continue to assert a claim nearly identical to the one previously dismissed, questioned her motivation, and warned of possible future sanctions if she continued to exhibit conduct that "falls short of what this Court expects of its officers." *McIntyre II*, 2017 WL 1483572, at *6. Connor was not deterred. Instead, she filed a nearly identical lawsuit, indifferent to this Court's warnings (Compl., Dkt. 1). In light of the record as a whole, the Court concludes that Connor pursued this third lawsuit in bad faith and for the improper purpose of harassing and annoying Defendants. Such conduct constitutes a reckless disregard of the duty owed to this Court.

As noted in this Court's previous order, "Connor's extensive and meritless litigation history against Defendants and other Lost Creek directors indicates a commitment to use the courts as a weapon of harassment against them" (Order, Dkt. 42, at 8–9). Despite this Court's two prior dismissals of nearly identical First Amendment retaliation claims against Defendants, she filed a third lawsuit alleging First Amendment retaliation on the basis of the same benign litigation update



See McIntyre v. Castro, No 1-15-CV-1100 RP, 2016 WL 1714919, at *4 (W D Tex Apr 8, 2016), *aff'd*, 670 F App'x 250 (5th Cir 2016), *reh'g denied* (Dec. 9, 2016) ("*McIntyre I*"), *McIntyre v. Castro*, No 1-16-CV-490 RP, 2017 WL 1483572, at *3 (W D Tex Apr 25, 2017), *aff'd in part sub nom Connor v. Castro*, 719 F App'x 376 (5th Cir 2018) ("*McIntyre II*"), *Connor v. Stewart*, No 1-17-CV-827-RP, 2018 WL 2994644, at *1 (W D Tex June 14, 2018), *aff'd*, 770 F App'x 244 (5th Cir 2019) In doing so, she advanced a "baseless claim despite clear evidence undermining her factual contentions," namely, two prior dismissals and an affirmance by the Court of Appeals *See id.* Throughout the litigation, Connor made claims that were "not merely meritless" but also made in bad faith for the purpose of harassing Defendants (*See Order*, Dkt 42, at 7) Given Connor's repeated efforts to advance allegations against Defendants in bad faith at every step of the litigation, shifting the entire burden of defending this lawsuit onto Connor is not only appropriate, but necessary to deter Connor from harassing Defendants with more meritless litigation in the future

Moreover, the monetary sanctions issued by state courts in similar litigation have not deterred Connor from filing this action, indicating the need for additional monetary sanctions (*See Orders*, Dkt 38-2) Even more troubling, Connor recently misrepresented the record in this case in a related state court action, attesting to a state court judge that this Court had dismissed her state law claims, when in fact this Court had merely declined to exercise supplemental jurisdiction over them and remanded them back to Texas state court (*See Advisory to the Court*, Dkt 67, at 1-5), *compare McIntyre II*, 2017WL 1483572, at *5 ("In light of the dismissal of Plaintiffs' federal claims, this Court will decline to exercise supplemental jurisdiction. Accordingly, the state law claims against Defendants are properly remanded back to Texas state court") *with* Connor's Request for Abstract Judgment, Dkt 67-1, at 1 ("[T]he record clearly indicates that the claims dismissed by the Hon Karin Crump had already been dismissed by the Western District of Texas, and therefore, the order is subject to collateral attack and injunctive relief") As this Court has already admonished, "Connor



has the legal training and experience to understand that the state-law portion of Defendants' motion was not adjudicated by this Court, which remanded Connor's state-law claims" (Dkt. 31 at 7). Therefore, Defendants' requested sanctions are also appropriate to deter Connor from misrepresenting this Court's record for the purpose of harassing defendants in an alternate forum.

Finally, Connor's frivolous filings have needlessly diverted this Court's time and resources away from the hundreds of meritorious cases and controversies on its docket (*See* Order, Dkt. 42, at 8 (discussing the burden that Connor's high volume of motions in this action and previous actions have had on this Court)). Thus, in continuing to prosecute her claims in bad faith, Connor not only saddled Defendants with the burden of defending against frivolous claims, but she also impeded this Court's ability to direct its attention to the meritorious plaintiffs on its docket in need of relief. Connor has imposed a similar burden on the Texas state court system. *See id.* (discussing the burden Connor's litigation tactics have placed on the state court system, particularly the five-hundred-page state court record in *McIntyre II*). Repeated admonitions and the threat of sanctions both by this Court and the Court of Appeals have not deterred Connor from continuing to litigate in bad faith. *McIntyre II*, 2017 WL 1483572, at *6 ("In short, the Court is troubled by Connor's conduct in this litigation the Court will not impose sanctions at this time, should similar concerns arise if this matter is again before this Court, the Court will not hesitate to consider sanctions—whether on motion or on its own initiative"), (*see also* Fifth Cir. Mandate, Dkt. 49, at 2 ("[A]ppellant, a lawyer representing herself pro se, is cautioned that any further prolongation of this case will likely result in additional sanctions"). The Court concludes that severe monetary sanctions are necessary to send the message to Connor that bad faith litigation brought for the purpose of harassment will not be tolerated, especially by an officer of the Court. Thus, this Court will assess the full cost of defending this suit against Connor.



In defending against Connor's baseless claims before this Court, Defendants incurred a total of \$28,646.50 in reasonable and necessary attorneys' fees and \$435.98 in expenses (Mot. Add Sanctions, Dkt. 60, at 6). In reviewing the submitted invoices, affidavit, and memorandum in support of this figure, the Court determines that both the work expended and the rates assessed are reasonable for the geographic area. Because Connor has not disputed the reasonableness of these sums and because the record demonstrates that "every facet" of Connor's third lawsuit was "patently meritless" and brought in bad faith for the improper purpose of harassing Defendants, (*see* Order, Dkt. 42, at 4-9), the Court concludes shifting the entire cost of the defense to Connor is appropriate pursuant to 28 U.S.C. § 1927.⁴ *See Procter & Gamble Co.*, 280 F.3d at 526. In addition to these monetary sanctions, the Court reminds Connor that a pre-filing injunction remains in place

Connor may not file a civil action against Defendants or other officers of the Lost Creek Municipal Utility District, directly or indirectly, in the Western District of Texas without receiving written leave from a federal district judge for this district. Any future complaint against Defendants or other officers of the Lost Creek Municipal Utility District in this district shall be accompanied by a motion for leave, and no summons shall issue unless leave is granted.

(Dkt. 42 at 9)

To echo the Court of Appeals, "[t]his case is over."

III. CONCLUSION

Accordingly, **IT IS ORDERED** that Defendants' Motion for Attorneys' Fees and Costs, (Dkt. 59), is **GRANTED**.

⁴ To the extent Connor's conduct is not covered by one of the other sanctioning provisions, this Court relies on its inherent power to impose attorneys' fees as a sanction for bad-faith conduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991) ("There is, therefore, nothing in the other sanctioning mechanisms or prior cases interpreting them that warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct. This is plainly the case where the conduct at issue is not covered by one of the other sanctioning provisions. But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules.")


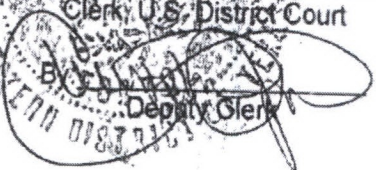


IT IS FURTHER ORDERED that Defendants' Motion for Additional Sanctions, (Dkt 60),
is **GRANTED**

Defendants are entitled to an award of **\$13,636.50 in attorneys' fees, \$276.27 in expenses, and double costs in the amount of \$58.00** for the damages incurred in defending against Connor's frivolous appeal

Defendants are further entitled to **\$28,646.50 attorneys' fees and \$435.98 in expenses** incurred in defending this matter before this Court

SIGNED on January 27, 2020


ROBERT PITTMAN
UNITED STATES DISTRICT JUDGE
A true copy of the original, I certify.
Clerk, U.S. District Court

Deputy Clerk

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded

RETURN

DENTON NAVRRO ROCHA BERNAL & ZECH,
P
2500 W WILLIAM CANNON DRIVE
SUITE 609
AUSTIN, TX 78745



2020021481

**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**

Dana DeBeauvoir

Dana DeBeauvoir, County Clerk
Travis County, Texas

Feb 10, 2020 02:09 PM

Fee: \$106.00

WELLINB



2020 - Values not available

Account

Property ID: 108378
 Geographic ID: 0109280314
 Type: Real
 Property Use Code:
 Property Use Description:
 Legal Description: LOT 14 BLK 4 LOST CREEK SEC 1
 Zoning:
 Agent Code:

Protest

Protest Status:
 Informal Date:
 Formal Date:

Location

Address: 6203 OLYMPIC OVERLOOK AUSTIN, TX 78746
 Map ID: 011037
 Neighborhood: N5200
 Neighborhood CD: N5200

Owner

Name: CONNOR MADELEINE B
 Owner ID: 1739050
 Mailing Address: 6203 OLYMPIC OVERLOOK AUSTIN, TX 78746 7229
 % Ownership: 100.000000000000%
 Exemptions: HS

(+) Improvement Homesite Value:	*	N/A
(+) Improvement Non-Homesite Value:	*	N/A
(+) Land Homesite Value:	+	N/A
(+) Land Non-Homesite Value:	+	N/A
(+) Agricultural Market Valuation:	+	N/A
(+) Timber Market Valuation:	+	N/A
<hr/>		
(=) Market Value:	=	N/A
(-) Ag or Timber Use Value Reduction:	-	N/A
<hr/>		
(-) Appraised Value:	=	N/A
(-) HS Cap:	-	N/A
<hr/>		
(=) Assessed Value:	=	N/A

Owner: CONNOR MADELEINE B
 % Ownership: 100.000000000000%



2/26/2020

Travis CAD - Property Details

Total Value: N/A

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
02	CITY OF AUSTIN	N/A	N/A	N/A	N/A
03	TRAVIS COUNTY	N/A	N/A	N/A	N/A
08	EANES ISD	N/A	N/A	N/A	N/A
0A	TRAVIS CENTRAL APP DIST	N/A	N/A	N/A	N/A
21	TRAVIS COUNTY HEALTHCARE DISTRICT	N/A	N/A	N/A	N/A
68	AUSTIN COMM COLL DIST	N/A	N/A	N/A	N/A
6P	LOST CREEK LIMITED DISTRICT	N/A	N/A	N/A	N/A
	Total Tax Rate:	N/A			

Taxes w/Current Exemptions: N/A
 Taxes w/o Exemptions: N/A

Improvement #1: 1 FAM DWELLING State Code: A Living Area: 7292 Sqft Value: N/A

Type	Description	Class CD	Exterior Wall	Year Built	SQFT
1st	1st Floor	WW 1		1976	1,220.0
2nd	2nd Floor	WW 3		1976	929.0
011	PORCH DECK/STAIR	N/A		1976	2,070.0
041	CARAGE ATT DET	WW 1		1976	1,010.0
071	POOL/SPAS/SHED	N/A		1976	2,720.0
251	BATH ROOM	N/A		1976	1.0
511	CLOTH CLOVERED	N/A		1976	1,070.0
522	HOT TUB	N/A		1976	1.0
252	BED ROOM	N/A		1976	1.0

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	LAND	Land	0.3076	13400.00	0.00	0.00	N/A	N/A

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2020	N/A	N/A	N/A	N/A	N/A	N/A
2019	\$261,000	\$420,000	0	681,000	\$100	\$680,900
2018	\$199,000	\$420,000	0	619,000	\$0	\$619,000
2017	\$260,000	\$360,000	0	620,000	\$0	\$620,000
2016	\$435,374	\$210,000	0	645,374	\$11,677	\$633,697
2015	\$449,122	\$130,000	0	629,122	\$53,034	\$576,088

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	10/3/2017	WD	WARRANTY DEED	VANWISSE DEWITT	CONNOR MADELEINE B			2017160495
2	3/1/2013	WD	WARRANTY DEED	NCM ACQUISITIONS LLC	VANWISSE DEWITT			2013037759TR
3	12/4/2012	MS	MISCELLANEOUS	BAE KUM YEO	NCM			2012209519TR



2/26/2020

Travis CAD - Property Details

& KYEONG I

ACQUISITIONS
LLC



2020 - Values not available

Account

Property ID: 111538
 Geographic ID: 0111280112
 Type: Real
 Property Use Code:
 Property Use Description:
 Legal Description: LOT 5 BLK 7 LOST CREEK SEC 2
 Zoning:
 Agent Code:

Protest

Protest Status
 Informal Date:
 Formal Date:

Location

Address: 6304 WHITEMARSH VLY WALK, Madiso,
 TX 78746
 Neighborhood: NS200
 Neighborhood CD: NS200
 Map ID: 011037

Owner

Name: CONNOR MADELINE G
 Mailing Address: 6203 OLYMPIC OVERLOOK
 AUSTIN, TX 78746-7228
 Owner ID: 1485600
 % Ownership: 100.00000000000000

Exemption:

(+) Improvement Homesite Value:	+	N/A	
(+) Improvement Non-Homesite Value:	+	N/A	
(+) Land Homesite Value:	+	N/A	
(+) Land Non Homesite Value:	+	N/A	
(+) Agricultural Market Valuation:	+	N/A	Ag / Timber Use Value
(+) Timber Market Valuation:	+	N/A	N/A
(=) Market Value:	=	N/A	N/A
(-) Ag or Timber Use Value Reduction:	-	N/A	
(-) Appraised Value:	=	N/A	
(-) HS Cap:	-	N/A	
(=) Assessed Value:	=	N/A	

Owner: CONNOR MADELINE G

% Ownership: 100.00000000000000



2/26/2020

Travis CAD - Property Details

Total Value: N/A

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
02	CITY OF AUSTIN	N/A	N/A	N/A	N/A
03	TRAVIS COUNTY	N/A	N/A	N/A	N/A
08	EANES ISD	N/A	N/A	N/A	N/A
0A	TRAVIS CENTRAL APP DIST	N/A	N/A	N/A	N/A
21	TRAVIS COUNTY HEALTHCARE DISTRICT	N/A	N/A	N/A	N/A
68	AUSTIN COMM COLL DIST	N/A	N/A	N/A	N/A
6P	LOST CREEK LIMITED DISTRICT	N/A	N/A	N/A	N/A
	Total Tax Rate:	N/A			

Taxes w/Current Exemptions: N/A
 Taxes w/o Exemptions: N/A

Improvement #1: 1 FAM DWELLING State Code: 41 Living Area: 2152.0 sqft Value: 11/16

Type	Description	Class CD	Exterior Wall	Year Built	SQFT
15T	1st Floor	WM		1981	2152.0
011	PORCH OPEN 1ST FL			1981	28.0
011	GARAGE AT 1ST FL	WM		1981	574.0
01	1st RESIDENTIAL			1981	2152.0
151	BATH-OLIV			1981	7.0
512	DECK UNCOVERED			1981	174.0
512	DECK UNCOVERED			1981	10.0
522	FIREPLACE			1981	1.0
50	MASONRY TRIM SL	WM		1981	205.0
612	TERRACE UNCOVERED			1981	100.0
512	DECK UNCOVERED			1981	225.0
512	DECK UNCOVERED			1981	20.0

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	LAND	Land	0.3595	15660.00	116.00	135.00	N/A	N/A

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2020	N/A	N/A	N/A	N/A	N/A	N/A
2019	\$210,200	\$357,500	0	577,700	50	\$577,700
2018	\$238,597	\$367,500	0	606,097	50	\$606,097
2017	\$281,174	\$283,500	0	564,674	\$225,996	\$338,678
2016	\$331,818	\$165,375	0	497,193	\$189,304	\$307,889
2015	\$342,296	\$141,750	0	484,046	\$204,147	\$279,899

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	10/26/2007	DV	DIVORCE	CONNOR CABRACH I &	CONNOR MADELINE G			DVRD-1-FM-06-003296



2/26/2020

Travis CAD - Property Details

2	8/2/2002	WD	WARRANTY DEED	MADELEINE G ORTMAN THOMAS E	CONNOR CABRACH J & MADELEINE G	00000	00000	2002143357TR
3	3/15/1989	AD	ASSUMPTION DEED	ORTMAN THOMAS E & DANIEL ORTMA	ORTMAN THOMAS E	10942	00027	



Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Madeleine Connor
Bar No. 24031897
mgbconnor@yahoo.com
Envelope ID: 45772537
Status as of 8/31/2020 1:24 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Clarissa Rodriguez		clarissa.rodriguez@rampage-sa.com	8/27/2020 10:59:11 PM	SENT
Lowell FrankDenton		lowell.denton@rampage-sa.com	8/27/2020 10:59:11 PM	SENT
Christy Burke		christy.burke@rampage-sa.com	8/27/2020 10:59:11 PM	SENT
David Rogers	24014089	Firm@DARogersLaw.com	8/27/2020 10:59:11 PM	SENT
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Lowell F. Denton		lfdenton@rampagelaw.com	8/27/2020 10:59:11 PM	SENT
Christy E. Burke		ceburke@rampagelaw.com	8/27/2020 10:59:11 PM	SENT
Hope Avila		havila@rampagelaw.com	8/27/2020 10:59:11 PM	SENT
Madeline Connor		mgbconnor@yahoo.com	8/27/2020 10:59:11 PM	SENT

I, **VELVA L. PRICE**, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on August 31, 2020



VELVA L. PRICE

DISTRICT CLERK

By Deputy: *Daniel J. Price*



AUG 31 2020

At 4 PM
Velva L. Price, District Clerk

TRAVIS COUNTY DISTRICT CLERK

CALCULATION AND SUBMISSION OF SUPERSEDEAS BOND FOR JUDGMENT AWARDING A RECOVERY OF MONEY

If supersedeas amount **agreed** per T.R.A.P. 24.1(a)(1), check here ☐ and attach copy of Rule 11 or agreement. Complete only Sec. B below.

To view detailed instructions or explanation, place cursor over any field with a red triangle in the upper right corner

SECTION A: CALCULATION OF BOND

CAUSE #:	D-1-GN-15-003714	PLTF:	MADELEINE CONNOR, DAVID McINTYRE
DATE OF JUDGMENT:		DEF:	ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH STEWART, CHA
COMPENSATORY DAMAGES	\$ 27,700.67	Award of attorney's fees subject to bond entered below	
ATTORNEY'S FEES		Include only if awarded as compensatory damages; otherwise, leave blank	
COSTS OF COURT	\$490.00	Include only recoverable trial costs; no appellate costs	
SUB-TOTAL	\$ 28,190.67		
POST-JUDGMENT INTEREST*	\$ 1,409.53	Calculated for one year from date of judgment*	
Interest (per tables - see link):	5.00%	Defaults to minimum rate; link to tables: http://www.occ.state.tx.us/pages/int_rates/Index.html	
SUPERSEDEAS BOND AMOUNT	\$ 29,600.20		
ACTUAL BOND AMOUNT **	30,000.00	50% of Judgment Debtor's net worth(if less than Total Bond Amount)	

SECTION B: SUBMISSION OF BOND

The amount of bond must be set by the trial court if:

- (1) less than amount required per Rule 24.2(a)(1)(A), T.R.A.P. ☐ cash, personal check, cashier's check ***
- (2) the judgment includes non-monetary relief ☐ negotiable securities (must be surrendered to the Clerk)
- (3) the judgment includes unspecified future costs or damages ☐ surety: underwritten (include surety's seal + agent's power of attorney)
- ☐ surety: personal (2 sureties required, oath of surety must be attached)

*Formulas are in conformance with Shook v. Walden, 304 S.W.3d 910. Post judgment interest is presumed to apply to all amounts subject to supersedeas pursuant to the opinion unless the judgment specifies otherwise. If no interest rate is specified, use the link to look up maximum interest rate based on judgment date.

** If total exceeds amount provided in Sec. 52.006(b) Civ. Prac. & Rem. Code; (Rule 24.2(a)(1)(A), T.R.A.P.), include Judgment Debtor's

Affidavit with bond as required per T.R.A.P. Rule 24.2(c)(1)

*** To have cash bonds invested, an order pursuant to Loc. Govt. Code 117.053 (c) is required.

I, VELVA L. PRICE, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on August 31, 2020



VELVA L. PRICE

DISTRICT CLERK

By Deputy: [Signature]



Exhibit “C”

> Legals (/tx/legals/search)

NOTICE OF SALE OF REAL ESTATE- COUNTY OF TRAVIS-STATE OF TEXAS

By virtue of a certain WRIT OF EXECUTION issued by the 419TH DISTRICT COURT of Travis County, Texas, on the 24TH day of JUNE, 2020 in certain causes numbered D-1-GN-15-003714 and 1:17-CV-00827, respectively, wherein ERIC CASTRO AND NANCY NAEVE AND GARY SERTICH AND LEAH STEWART AND CHARLES MCCORMICK is Defendant and DAVID MCINTYRE AND MADELEINE CONNOR is Plaintiff, found in favor of said Defendant for the sum of: - For cause numbered D-1-GN-15-003714: TWO THOUSAND ONE HUNDRED TWENTY FOUR AND 00/100 DOLLARS (\$2,124.00) PLUS \$76.67 IN COSTS, \$500.00 IN SANCTIONS, \$15,000.00 IN ATTORNEY'S FEES FOR THE UNSUCCESSFUL APPEAL IN THE THIRTEENTH COURT OF APPEALS, \$20.00 IN COSTS FOR THE THIRTEENTH COURT OF APPEALS COSTS, \$10,000.00 FOR THE TEXAS SUPREME COURT COSTS ON AN ORDER GRANTING DEFENDANT'S MOTION TO DISMISS - AND, For cause numbered 1:17-CV-00827: THIRTEEN THOUSAND SIX HUNDRED THIRTY SIX 50/100 DOLLARS (\$13,636.50) IN ATTORNEY'S FEES FOR APPEAL, \$276.27, \$58.00 IN DOUBLE COSTS IN APPEAL COSTS, \$28,646.50 IN ATTORNEY'S FEES FOR DISTRICT LAWSUIT (SANCTIONS), \$435.98 IN COSTS FOR DISTRICT LAWSUIT (SANCTIONS) - That being the amount of the judgment recovered by said Plaintiff, in the 419th District Court of Travis County, Texas on the 23th day of JUNE, 2017, and the United States District Court for the Western District of Texas Austin Division, Texas, on the 27th day of JANUARY, 2020, respectively. - I, DEPUTY JUAN ARISPE #327 on the 29TH day of JULY, 2020 have levied upon, and will on the 1ST day of SEPTEMBER, 2020 between the hours of 10:00 a.m. and 4:00 p.m. on said day, at the courthouse steps of said county, offer for sale at public auction for cash to the highest bidder, all the right, title and interest of Defendant in and to the following described property, levied upon as the property of Defendant, to wit: - LOT 5 BLK 7 LOST CREEK SEC 2; - COMMONLY KNOWN AS 6304 WHITEMARSH VLY WALK, AUSTIN, TEXAS 78746 - Note: On the property sold there are no warranties, expressed or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. You have bought the property "as is". Buyers are further advised that the purchase of the property at the Constable's sale may not extinguish any liens or security interest on or in the property. You have simply purchased whatever interest the defendant had in the property. If you have any questions, you should consult the counsel of your choice. - The purchaser will be required to produce an unexpired written statement from the Tax-assessor-collector of the County in which the sale is conducted that there are no delinquent ad valorem taxes owed to the county, school district or municipality. - The above sale to be made by me to satisfy the above-described judgment for: - Cause numbered D-1-GN-15-003714: TWO THOUSAND ONE HUNDRED TWENTY FOUR AND 00/100 DOLLARS

(\$2,124.00) PLUS \$76.67 IN COSTS, \$500.00 IN SANCTIONS, \$15,000.00 IN ATTORNEY'S FEES FOR THE UNSUCCESSFUL APPEAL IN THE THIRTEENTH COURT OF APPEALS, \$20.00 IN THE COSTS FOR THE THIRTEENTH COURT OF APPEALS COSTS, \$10,000.00 FOR THE TEXAS SUPREME COURT COSTS ON AN ORDER GRANTING DEFENDANT'S MOTION TO DISMISS - AND, Cause numbered 1:17-CV-00827: THIRTEEN THOUSAND SIX HUNDRED THIRTY SIX 50/100 DOLLARS (\$13,636.50) IN ATTORNEY'S FEES FOR APPEAL, \$276.27, \$58.00 IN DOUBLE COSTS IN APPEAL COSTS, \$28,646.50 IN ATTORNEY'S FEES FOR DISTRICT LAWSUIT (SANCTIONS), \$435.98 IN COSTS FOR DISTRICT LAWSUIT (SANCTIONS). .

Proceeds applied to the satisfaction thereof. - /S _____ - Stacy Suits, Constable - Travis County, Pct 3 - 8656 B Hwy. 71 West, Ste., 132, Austin, TX 78735 - 512-854-2107 - Posted this 5th day of August, 2020 - By: _____ - Deputy Juan Arispe #327

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POWERED BY 

Exhibit “D”

DAVID McINTYRE, et al.,	§	IN THE DISTRICT COURT
Plaintiffs	§	
vs.	§	
	§	419TH JUDICIAL DISTRICT OF
ERIC CASTRO, et al.,	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

MOTION FOR STAY OF EXECUTION

TO THE HONORABLE SENIOR DISTRICT JUDGE W.C. KIRKENDALL:

COMES NOW, Plaintiff and Madeleine Connor, and files this her request for a stay of the writ of execution issued in this case.

On August 27, 2020, Plaintiff first became aware of a notice of sale of her non-exempt real property located at 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas, 78746. On the same day, August 27, 2020, the District Clerk file-stamped a supersedeas bond,¹ and on the following day, accepted a cash payment of \$30,000.00 for issuance of the bond.²

The unserved notice of sale indicates that Connor's non-exempt real property described above will be sold at auction on September 1, 2020.³

Connor immediately took action to avoid the sale by requesting that the Travis County District Clerk accept her supersedeas to satisfy immediately the judgment, which the Clerk did. Connor also filed a request that the Court make findings under Tex. Prop. Code § 51.0011 and filed it with the clerk. Connor's lead counsel, Mr. David Rogers, also filed an endorsement and ratification of the motion and supersedeas filed and tendered by Ms. Connor.

Although Connor still maintains various irregularities exist, and intends to exercise those legal remedies to overturn the judgment and the Abstract of Judgment rendered by the Travis

¹ Exhibit A, Supersedeas Bond file-stamped September 27, 2020

² Exhibit B, Receipt for cash payment of \$30,000.00 for issuance of the bond

³ Exhibit C, Notice of Sale of 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas, 78746.

County District Clerk and issuance of the writ of execution upon which the sale of the property purportedly rests, Connor files this request for stay of execution by emergency hearing or submission to halt the execution on her real property located at 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas 78746, on September 1, 2020.

PRAYER

Plaintiff prays that the Court grant Plaintiff's request for a stay of execution sufficient to avoid a sale of her real property located at 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas 78746, on September 1, 2020. Connor prays for general relief.

Respectfully submitted,

/s/ David Rogers

David Rogers

State Bar No. 24014089

Firm@DARogersLaw.com

LAW OFFICE OF DAVID ROGERS

595 Round Rock West Drive, Suite #102

Round Rock, Texas 78681

Phone: (512) 923-1836

Fax: (512) 685-1144

Attorney for Madeleine Connor

Exhibits

Exhibit A, Supersedeas Bond file-stamped September 27, 2020

Exhibit B, Receipt for cash payment of \$30,000.00 for issuance of the bond

Exhibit C, Notice of Sale of 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas, 78746.

[Remainder of Page intentionally Left Blank]

CERTIFICATE OF SERVICE

I certify that this instrument was served on the following persons on the 31st day of August, 2020: Lowell Denton and Scott M. Tschirhart, in accordance with Rule 21a, Texas Rules of Civil Procedure.

SCOTT M. TSCHIRHART

State Bar No. 24013655

Scott.Tschirhart@rampage-aus.com

SMTschirhart@rampagelaw.com

LOWELL F. DENTON

State Bar No. 05764700

lowell.denton@rampage-sa.com

LFDenton@rampagelaw.com

DENTON NAVARRO ROCHA BERNAL & ZECH

2517 N. Main Avenue

San Antonio, Texas 78212

(210) 227-3243

(210) 225-4481 Facsimile

ATTORNEYS FOR SUBROGEE

TEXAS MUNICIPAL LEAGUE

INTERGOVERNMENTAL RISK POOL

/s/ David Rogers

David Rogers

Attorney for Madeleine Connor

No. D-1-GN-15-003714

**DAVID McINTYRE, et al.,
Plaintiffs**

vs.

**ERIC CASTRO, et al.,
Defendants.**

§
§
§
§
§
§

IN THE DISTRICT COURT

419TH JUDICIAL DISTRICT OF

TRAVIS COUNTY, TEXAS

STAY OF EXECUTION

Before the Court on emergency hearing, is Madeleine Connor's Application for a Stay of Execution.

The Court grants the stay, as she has posted security to suspend execution of the Final Judgment in the amount of \$30,000.

Accordingly, the execution of the judgment by writ, and/or enforcement and sale of Madeleine Connor's property located at 6304 Whitmarsh Valley Walk, Travis County, Austin, Texas 78746, is hereby STAYED.

The Court further orders that delivery of this Order to the Travis County Constable Precinct #3 by email or other means shall be sufficient notice to effectuate this stay of execution.

Signed this _____ day of _____, 2020

The Honorable Senior District Judge W.C. Kirkendall

Exhibit “A”

AUG 27 2020 DF

At 1:23 P.M.
Velve L. Price, District Clerk

No. D-1-GN-15-003714

DAVID McINTYRE, et al.,
Plaintiffs

vs.

ERIC CASTRO, et al.,
Defendants.

§
§
§
§
§
§

IN THE DISTRICT COURT

419TH JUDICIAL DISTRICT OF

TRAVIS COUNTY, TEXAS

SUPERSEDEAS

COMES NOW, Plaintiff Madeleine Connor, and files this her Supersedeas.

Pursuant to Texas Rule of Appellate Procedure 24 and Civil Practice & Remedies Code Chapter 52, Plaintiff Madeleine Connor, herewith files this deposit in lieu of bond.

1. The Western District of Texas signed an order on January 27, 2020, in cause number 1:17-cv-00827-RP [Dkt. 70];
2. The Defendants recorded the order referenced above on February 10, 2020;
3. On February 26, 2020, Plaintiff filed a notice of appeal to the order, which was an award of attorney's fees and sanctions;
4. The trial court's order awarded no compensatory damages or interest thereon; therefore, the amount of supersedeas required is \$ 0. *See In re Corral-Lerma*, 451 S.W.3d 385 (Tex. 2014); *Shook v. Walden*, 304 S.W.3d 910 (Tex. App.—Austin 2010), *overruled on other grounds*, 451 S.W.3d 385 (Tex. 2014);
5. Connor filed a supersedeas on February 26, 2020, but was unable to post a bond before the courthouse closed due to covid, and;
6. This document is resubmitted with the Travis County Clerk, with the sum of thirty-thousand dollars (\$30,000.00), as a deposit in lieu of bond. This amount should be sufficient to supersede all costs and amounts finally determined by appeal. See

attached. Ms. Connor intends to challenge this payment and the abstract of judgment that purports to allow execution on her non-exempt property by collateral attack.

Respectfully submitted,

/s/ Madeleine Connor

Madeleine Connor

SBOT # 24031897

P.O. Box 161962

Austin, Texas 78716-1962

(512) 289-2424

(512) 329-5229 (fax)

mgbconnor@yahoo.com

CERTIFICATE OF SERVICE

I certify that this instrument was served on the following persons on the 27th day of August, 2020: Lowell Denton and Scott M. Tschirhart, at the following email addresses: lowell.denton@rampage-sa.com, Scott.Tschirhart@rampage-aus.com.

/s/ David Rogers

David Rogers

Attorney for Madeleine Connor



San Antonio | Austin | Rio Grande Valley | Texas Gulf Coast
2500 W. William Cannon Drive, Suite 609 | Austin, Texas 78745-5320
V 512-279-6431 | F 512-279-6438

June 5, 2020

Velva L. Price
Travis County District Clerk
P.O. Box 679003
Austin, Texas 78767-9003

E-FILE NOTIFICATION

Re: *In Re David McIntyre*
Cause No. D-1-GN-15-003714, in the 419th Judicial District Court, Travis County, Texas
Request to Writ of Execution

Dear Ms. Price:

Please process this request for re-issuance of a Writ of Execution by the Clerk. The Office of Travis County Constable, Precinct No. 3 was unable to serve the original Writ prior to its expiration as their office was closed due to COVID-19. Therefore, re-issuance is required.

The information below is to be stated on the writ:

CAUSE NO. D-1-GN-15-003714

In re DAVID McINTYRE,
Petitioner,

§ IN THE DISTRICT COURT OF
§
§
§ 419th JUDICIAL DISTRICT
§
§ TRAVIS COUNTY, TEXAS

Attached is a copy of the *Order Granting Defendants' Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code* issued by the Honorable Judge Karin Crump on June 23, 2017 and file-stamped by your office on June 26, 2017. In the Order, Judge Crump awarded the following for the Defendants against Plaintiff Madeleine Connor, (jointly and severally with Plaintiff David McIntyre):

Velva L. Price
Travis County District Clerk
June 5, 2020
2 | Page

Attorney's Fees:	\$ 2,124.00
Costs:	\$ 76.67
Sanctions:	\$ 500.00
Thirteenth Court of Appeals (unsuccessful)	\$15,000.00
Thirteenth Court of Appeals Costs	\$ 20.00
Texas Supreme Court (unsuccessful)	<u>\$10,000.00</u>
TOTAL:	\$27,720.67

Attached is a copy of the filed and recorded Abstract of Judgment for the aforementioned amount.

On January 27, 2020, United States District Judge Robert Pitman issued an Order in Cause No. 1:17-cv-00827; styled *Madeleine Connor v. Leah Stewart, Eric Castro and Chuck McCormick*, in the Western District of Texas-Austin Division. In his Order, Judge Pitman granted Defendants' their attorneys' fees, costs and additional sanctions against Plaintiff. The award is as follows:

Attorney's Fees for Appeal:	\$13,636.50
Costs for Appeal:	\$ 276.27
Double Costs (in Appeal costs)	\$ 58.00
Attorney's Fees for District lawsuit (sanctions):	\$28,646.50
Costs for District lawsuit (sanctions):	<u>\$ 435.98</u>
TOTAL:	\$43,053.25

Attached is copy of the filed and recorded Order (Abstract of Judgment).

Plaintiff Madeleine Connor, individually, owes Texas Municipal League Intergovernmental Risk Pool ("TMLIRP") by and through former Defendants Eric Castro, Nancy Naeve, Gary Sertich, Leah Stewart and Charles McCormick the **total sum of \$70,773.92**.

Creditor to be listed in the Writ of Execution is:

Texas Municipal League Intergovernmental Risk Pool by and through Defendants Eric Castro; Nancy Naeve; Gary Sertich; Leah Stewart; and Charles McCormick, as Subrogee.

Address:
Texas Municipal League Intergovernmental Risk Pool
c/o Denton Navarro Rocha Bernal & Zech, P.C.
2500 W. William Cannon, Suite 609
Austin, Texas 78745

Velva L. Price
Travis County District Clerk
June 5, 2020
3 | Page

Debtor to be listed in the Writ of Execution is:

Madeleine Connor

Mailing Address: P.O. Box 161962

Physical Addresses: 6203 Olympic Overlook, Austin, Texas 78746 and 6304 Whitemarsh Vly Walk, Austin, Texas 78746.

Driver's License Number: Unknown

Social Security Number: Unknown

Date of Birth: Unknown

Attached are Travis County CAD records for the properties at 6203 Olympic Overlook and 6304 Whitemarsh Vly Walk in Austin, Travis County, Texas. Debtor claims a homestead exemption on Olympic Overlook property.

Payment of the fee for the re-issuance of this Writ will be paid electronically with this request.

If additional information is needed, please contact our office at (512) 279-6431.

Very truly yours,

Denton Navarro Rocha Bernal & Zech, P.C.
attorneys & counselors at law • rampagelaw.com



SCOTT M. TSCHIRHART
smtschirhart@rampagelaw.com

SMT/ha

Enclosures: As stated

cc: David Rogers
Law Office of David Rogers
595 Round Rock West Drive, Suite #102
Round Rock, Texas 78681

E-FILE NOTIFICATION

RETURN TO: Denton Navarro Rocha Bernal & Zech, P.C.
Attn: Scott M. Tschirhart
25000 W. William Cannon Drive, Suite 609
Austin, Texas 78745



THE STATE OF TEXAS
County of Travis

CAUSE NO. D-1-GN-15-003714

A B S T R A C T O F J U D G M E N T

I, **VELVA L. PRICE**, Clerk of the District Court of TRAVIS County, Texas, do hereby certify that in the District Court of Travis County, Texas, in a certain suit pending in the 419TH JUDICIAL DISTRICT COURT.

D-1-GN-15-003714, wherein

DAVID MCINTYRE AND MADELEINE CONNOR
and

, Plaintiff(s)

ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH STEWARD, CHARLES MCCORMICK,
TOM CLARK AND JANE/JOHN DOE 1, 2, AND 3, WHOSE BIRTH DATES, SOCIAL SECURITY
NUMBERS AND DRIVER'S LICENSE ARE NOT AVAILABLE TO THE CLERK

, Defendant(s)

the said

ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH CHARLES MCCORMICK AND JANE/JOHN DOE 1, 2,
AND 3

BY AND THROUGH THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL
C/O DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.
2500 W. WILLIAM CANNON, STE. 609
AUSTIN, TEXAS 78745

Recovered judgment against the said
DAVID MCINTYRE
6201 AUGUSTA NATIONAL DRIVE
AUSTIN, TEXAS 78746

AND

MADELEINE CONNOR
6203 OLYMPIC OVERLOOK
AUSTIN, TEXAS 78746

AND

6304 WHITEMARSH VLY WALK
AUSTIN, TEXAS 78746

On the JUNE 23, 2017 JOINTLY AND SEVERALLY for the sum of **TWENTY-SEVEN THOUSAND SEVEN HUNDRED AND 67/100 DOLLARS (\$27,700.67)**.

Said judgment is entitled to following credits, to-wit: NONE.

There is now still due on said judgment **\$27,700.67**, with interest as hereinabove set out.

Given under my hand and seal of office at Austin, Texas, December 02, 2019.



Velva L. Price
Velva L. Price
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 670003 (78767)
Austin, TX 78701

PREPARED BY: CARRISA ESCALANTE

D-1-GN-15-003714

☐ Original☐ File Copy

P46 - 000001175



2019188751

**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**

Dana DeBeauvoir

**Dana DeBeauvoir, County Clerk
Travis County, Texas**

Dec 02, 2019 02:13 PM

Fee: \$30.00

MEDINAE



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MADELEINE CONNOR,

Plaintiff,

v

LEAH STEWART,
ERIC CASTRO, and
CHUCK MCCORMICK,

Defendants

17-CV-827-RP

ORDER

Before the Court are Defendants Leah Stewart, Eric Castro, and Chuck McCormick's (collectively, "Defendants") Amended Motion for Attorneys' Fees, (Dkt. 59), and Motion for Additional Sanctions, (Dkt. 60). Having considered the parties' briefing, the record, and the relevant law, the Court will grant both motions.

I. BACKGROUND

Plaintiff Madeleine Connor ("Connor") lives in the Lost Creek Municipal Utility District ("Lost Creek") and Defendants Leah Stewart, Eric Castro, and Chuck McCormick (collectively, "Defendants") are all directors of Lost Creek (Compl., Dkt. 1, at 1-2). Connor has now sued Defendants three times in this Court for the same cause of action. *See McIntyre v. Castro*, No. 1:15-CV-1100 RP, 2016 WL 1714919, at *4 (W.D. Tex. Apr. 8, 2016), *aff'd*, 670 F. App'x 250 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016) ("McIntyre I"), *McIntyre v. Castro*, No. 1:16-CV-490 RP, 2017 WL 1483572, at *3 (W.D. Tex. Apr. 25, 2017), *aff'd in part sub nom. Connor v. Castro*, 719 F. App'x 376 (5th Cir. 2018) ("McIntyre II"), *Connor v. Stewart*, No. 1:17-CV-827-RP, 2018 WL 2994644, at *1 (W.D. Tex. June 14, 2018), *aff'd*, 770 F. App'x 244 (5th Cir. 2019). In all three cases, the Court determined

that Connor's claims were not well-grounded in law or fact and dismissed Connor's lawsuits for failure to state a plausible claim for relief. *See id.*

In *McIntyre I*, Connor alleged that Defendants sent a "pejorative" email with "evil intent" to Lost Creek residents "purporting to be an 'update' about" a lawsuit she filed against Defendants (*McIntyre I*, Compl., Dkt. 5, at 1). Upon reviewing the email, the Court determined that it was not pejorative, but rather that it "simply state[d] the basis of Plaintiffs' claims and that Defendants rebut them." *McIntyre I*, 2016 WL 1714919, at *4. The Court dismissed Connor's claim, holding that her allegations fell "well short of supporting a claim for First Amendment retaliation." *Id.* Connor appealed. The United States Court of Appeals for the Fifth Circuit ("Court of Appeals") affirmed the Court's opinion, specifically finding that Connor's allegations did "not constitute retaliation." *McIntyre v. Castro*, 670 F. App'x 250, 251 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016).

One week after the Court issued its order in *McIntyre I*, and while her appeal remained pending, Connor sued Defendants again (*See McIntyre II*, Notice of Removal, Dkt. 1, at 3). Connor's *McIntyre II* complaint—her seventh amended petition in state court—alleged a First Amendment retaliation claim "nearly identical" to her claim in *McIntyre I*. *McIntyre II*, 2017 WL 1483572, at *4. The Court again dismissed the claim. *Id.* Connor then moved to amend her complaint to add another First Amendment retaliation claim, the Court denied her motion. *Id.* at *6. Connor appealed that decision. *Connor v. Castro*, 719 F. App'x 376, 379 (5th Cir. 2018). The Court of Appeals affirmed this Court's decision, agreeing that it would have been futile to permit her to add the claim. *Id.* at 380.

In *McIntyre II*, the Court found that the record gave "the impression that the current litigation may be motivated as much or more by animosity between Connor and the Defendants

¹ There were two named plaintiffs in *McIntyre I* and *McIntyre II*—Madeleine Connor and David McIntyre. *See McIntyre I*, 2016 WL 1714919, *McIntyre II*, 2017 WL 1483572.

than any legally cognizable injury Plaintiffs may have suffered " *McIntyre II*, 2017 WL 1483572, at *6. The Court stated that Connor's conduct, which included her "presentation of an objectively benign e-update as defamatory," was troubling. *Id.* In continuing "to engage in motion practice to add allegations that [were] plainly insufficient"—particularly in light of this Court's prior order, which was subsequently affirmed by the Court of Appeals—this Court found that her conduct fell "well short of what this Court expects of its officers." *Id.* While the Court declined to sanction Connor at that time, it warned her it would "not hesitate to consider sanctions—whether on motion or on its own initiative" should Connor continue to litigate this issue in the future. *Id.*

Despite that warning, Connor filed a third lawsuit in this Court, again alleging a First Amendment retaliation claim on the basis of an objectively benign litigation update. (Am. Compl., Dkt. 8, at 2). In doing so, she repeated a claim that had been twice rejected by this Court and once by the Court of Appeals. *McIntyre I*, 2016 WL 1714919, at *4; *McIntyre II*, 2017 WL 1483572, at *4; *McIntyre v. Castro*, 670 F. App'x 250, 251 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016). Her only new theory of retaliation—that Defendants intended to punish her by filing a valid defensive motion in a lawsuit that she brought against them—was one the Court determined Connor, a lawyer, should understand to be frivolous. (Order, Dkt. 31, at 10). Again, this Court dismissed Connor's action as meritless. (*Id.*)

In dismissing Connor's third baseless lawsuit, this Court recited her history of vexatious litigation and found that Connor filed the action for "the improper purpose of harassing and imposing litigation costs on Defendants." (*Id.*) The Court determined that the appropriate Rule 11 sanction was to require Connor to pay Defendants' reasonable attorneys' fees and expenses related to this action. (*Id.* at 11). The Court then ordered Defendants to submit a motion for reasonable attorneys' fees and expenses. (*Id.* at 12). Concluding that a pre-filing injunction might be appropriate to deter Connor from using the courts "as a weapon of harassment" against the Defendants, the

Court also ordered the parties to attend a hearing to consider the proper scope of a pre-filing injunction (*Id.* at 8, 12)

Pursuant to the Court's order, Defendants filed a motion requesting \$16,235.16 in reasonable attorneys' fees and expenses (Mot. Att'y Fees, Dkt. 32, at ¶ 18). The Court ultimately denied Defendants' motion because they failed to comply with Rule 11's safe harbor provision (Order, Dkt. 42, at 3). However, after giving Connor the required notice and hearing, (Dkt. 31, 40), the Court imposed a pre-filing injunction against Connor *sua sponte*, barring her from filing any civil action "against Defendants or other officers of the Lost Creek Municipal Utility District, directly or indirectly, in the Western District of Texas without receiving written leave from a federal district judge for this district" (Order, Dkt. 42, at 9).

Connor appealed that order (Dkt. 44). Her appeal was dismissed because she didn't timely file her brief (Dkt. 47). The Fifth Circuit subsequently reinstated her appeal (Dkt. 48). The Fifth Circuit then affirmed this Court's order without an opinion (Dkt. 50, Ex. S). She petitioned for rehearing by the panel. (*Id.* at Ex. T). After nearly a year of defending the appeal, Defendants then filed a motion for appellate sanctions (*Id.* at Ex. U). In that motion, Defendants expressly argued that Connor's entire appeal was frivolous and sought sanctions pursuant to Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1912. (Dkt. 50, at 1 ("Now come Appellees, Leah Stewart, Eric Castro and Chuck McCormick and file their Motion for Sanctions pursuant to Federal Rule of Appellate Procedure 38", "The current appeal is frivolous on its face in that Appellant makes the same arguments that have been previously rejected by the trial court and this honorable Court", "[T]his Court [should] remand this case to the district court 'to determine the amount of costs and damages to be paid to appellees, as provided by 28 U.S.C. § 1912'"))

The Court of Appeals granted Defendants' motion and remanded to the district court "to determine the amount of costs and damages to be paid to appellees, as provided by 28 U.S.C.

§ 1912" (Dkt. 49 at 1). The Court of Appeals further cautioned Connor, "a lawyer representing herself pro se," that "any further prolongation of this case will likely result in additional sanctions" (*Id.* at 2). Except for "the determination of costs and sanctions by the district court on remand," the Court of Appeals stated, in all caps, "THIS CASE IS OVER" (*Id.*)

On remand, Defendants filed two motions for attorneys' fees and costs, (Dkt. 50, 53), neither of which complied with this Court's Local Rules W.D. Tex. Loc. R. CV-7()(1). The Court ordered Defendants to properly confer with Connor and file an amended motion for attorneys' fees, costs, and sanctions that adhered to the local rules (Order, Dkt. 56, at 2). The Court further ordered the parties to "advise the Court what other sanctions, if any, they believe to be appropriate" (*Id.* at 1). Defendants then filed an Amended Motion for Attorneys' Fees, (Dkt. 59), and a Motion for Additional Sanctions, (Dkt. 60). Those motions are now before the Court, (Mot. Att'y Fees, Dkt. 59, Mot. Sanctions, Dkt. 60). First, the Court will turn to Defendants' Motion for Attorneys' Fees, (Dkt. 59), which requests attorneys' fees, costs, and expenses incurred defending against Connor's appeal. Second, the Court will address Defendants' Motion for Additional Sanctions, (Dkt. 60), which requests sanctions in the form of attorneys' fees incurred defending this lawsuit before this Court.

II. DISCUSSION

A. Motion for Attorneys' Fees, Costs, Expenses

Pursuant to the Court of Appeals' mandate, Defendants seek \$13,636.50 in attorneys' fees, \$276.27 in expenses, and double costs in the amount of \$58.00 for damages incurred in defending against Connor's appeal from October 1, 2018, the date Connor filed her Notice of Appeal, (Dkt. 44), and June 21, 2019, the date the Court of Appeals granted Defendants' motion for sanctions and remanded to the District Court for a determination of the amount of costs and damages, (Dkt. 49) (Mot. Att'y Fees, Dkt. 59, at 4-5).

Connor contends that the Court should deny Defendants' request for attorneys' fees and costs because it "does not comply with this District's rule concerning the form, content, timeframe, or conference provisions of a request for attorney's fees" (Pl's Resp, Dkt 61, at 2 (citing W D Tex Loc R CV-7(j)(1)-(3))). Alternatively, Connor asks that the Court limit Defendants' fees and costs to those associated with the delay caused by her filing a motion for rehearing rather than awarding Defendants the fees and costs accrued in defending against the appeal as a whole (*Id.* at 12). The Court finds both of these arguments lacking and discusses each of them in turn below.

1 Defendants' Motion Complies with the Local Rules

Connor contends that Defendants' motion for attorneys' fees should be denied—"save perhaps double costs, which 28 U.S.C. § 1912 permits, presumably without any form of motion being timely and compliantly filed"—because it does not comply with Local Rule CV-7(j). On this point, Connor makes three arguments. First, she contends that Defendants did not satisfy the "meet and confer" requirement under the local rules because "Defendants' counsel refused to have any substantive discussions with Plaintiff regarding their request for fees and sanctions and walked out of the conference after the passage of only fifteen minutes" (Dkt 61 at 3–5). Second, she argues that Defendants' motion did not certify her specific objections to Defendants' requested attorneys' fees, objections she alleges she could not specifically articulate "because only an oral number was proposed, with no detail" (Dkt 61 at 6). Third, Connor contends that while Defendants' motion includes a billing document, it does not comply with the drafting and certification requirements, specifically, she argues that attaching a 22-page billing statement without "a more easily readable table" skirts the simplicity the local rules "seem to encourage" (*Id.*).

The Court concludes that Defendants' motion properly complies with the local rules. *See* W D Tex Loc R CV-7(j). It is undisputed that Defendants' counsel met in person with Connor on July 30, 2019 to discuss their intention to seek attorneys' fees (*see* Pl's Resp, Dkt 61, at 4). During

that meeting, Defendants "repeatedly asked" for Connor's objections to the fee amount, but Connor only offered a specific objection to one eight-hour billing entry (Defs' Reply, Dkt 59, at 6). Defendants noted this objection in their motion and properly "certified the reason why the matter could not be resolved by agreement" W D Tex. Loc. R. CV-7(j), (*see also* Mot. Att'y. Fees, Dkt 59, at 5-7 ("The parties could not reach an agreement because Plaintiff offered [an amount] inconsistent with Defense counsel's authority")) And Rule 7(j) imposes no time requirement for a conference. *See* W D Tex. Loc. R. CV-7(j). From the Court's perspective, fifteen minutes is sufficient to entertain that single objection.

Moreover, Connor's contention that she "could not articulate a specific objection" to "an oral request for \$40,000" because Defendants tendered the fee-bill to her "only 30 minutes before the meeting convened" is a flagrant misrepresentation of the facts (Pl's Resp., Dkt 61, at 5). Defendants provided statements and draft bills with their Motion for Attorneys' Fees and Costs pursuant to the order from the Court of Appeals, (Dkt 49), on June 25, 2019 (Orig. Mot. Att'y Fees, Dkt. 50). Defendants emailed Connor with an updated set of statements on July 24, 2019, a full six days before the conference (Email, Dkt 63-1, at 1). In that same email, Defendants' counsel expressly indicated that Defendants intended to seek attorneys' fees and costs incurred for the entire appeal and additional sanctions in the form of attorneys' fees and costs related to the rest of the case (*Id.* at 1). Connor had the time and the information necessary to formulate her objections ahead of the conference and did not do so. She cannot now misrepresent the record to manufacture noncompliance with the local rules in an attempt to evade sanctions.

Connor's argument that Defendants' motion should be denied because it "does not comply with the drafting and certification requirements of the rule" is likewise baseless (Pl's Resp., Dkt 61, at 6). Defendants' motion contains the requisite chronological billing activity, affidavit, and memorandum setting forth the method by which fees were computed W D Tex. Loc. R. CV-

7(j) There is no requirement that a movant for reasonable attorneys' fees include "a more easily readable table," (Pl's Resp, Dkt 61, at 6), billing records provide sufficient support for the legal services rendered by Defendants in defending this action. *People's Capital & Leasing Corp. v McClung*, No 5:17-cv-484-OLG, 2018 WL 7291447, at *2 (W.D. Tex. Aug. 20, 2018) ("Plaintiff's attorney's fees request is properly supported by copies of the invoices for legal services.") Moreover, Defendant's counsel attested to the reasonableness of these rates in an affidavit attached to the motion (Tschirhart Aff, Dkt. 59-2, at 1-2), W.D. Tex. Loc. R. CV-7(j).

Thus, the Court concludes that Defendants' Motion for Attorneys' Fees complies with the local rules and Connor's arguments to the contrary are, predictably, without merit. The Court will now turn to Connor's next argument pertaining to the scope of the Court of Appeals' mandate.

2. Defendants are Entitled to Fees and Costs for the Entire Appeal

Connor contends that Defendants' request for attorneys' fees and costs incurred for the entire appeal should be denied because the Court of Appeals "rejected" Defendants' "repeated requests in the appellate court to award fees and sanctions for frivolous appeal." (Pl's Resp, Dkt 61, at 8) In support of this argument, Connor cites to the text of the Court of Appeals' order, which she notes omits the words "frivolous" and "Rule 38" and cites only to 28 U.S.C. § 1912. *Id.* Connor interprets these omissions to mean the Court of Appeals denied Defendants' request for sanctions pursuant to Rule 38 and instead limited the scope of sanctions on remand to the delay associated with Connor's decision to file a motion for panel rehearing. (*Id.*)

Under Federal Rule of Appellate Procedure 38, "[i]f a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Meanwhile, 28 U.S.C. § 1912 provides that "[w]here a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and

single or double costs " 28 U S C § 1912. Importantly, the rule—unlike the statute—allows a court to order damages and costs for a frivolous appeal without finding that the appeal resulted in delay. See Fed R App P 38 advisory committee notes to 1967 adoption, *see also State of Tex. v. Gulf Water Benefaction Co.*, 679 F 2d 85, 87 n 1 (5th Cir 1982), *Hagerty v. Succession of Clement*, 749 F 2d 217, 222 (5th Cir 1984) ("[T]he courts of appeals quite properly allow damages, attorney's fees and other expenses incurred by an appellee if the appeal is frivolous without requiring a showing that the appeal resulted in delay"). An award of damages and double costs as sanctions for the filing of a frivolous appeal "may be made against an appellant under 28 U S C § 1912 and Fed R App P 38." *Olympia Co. v. Celotex Corp.*, 771 F 2d 888, 893 (5th Cir 1985). Thus, if a frivolous appeal results in delay, courts may use Rule 38 and 28 U S C § 1912 interchangeably. See *Exhibitors Poster Exch., Inc. v. Nat'l Screen Serv. Corp.*, 78 F.R.D. 192, 195 (E.D. La 1978).

Having reviewed the Court of Appeals' order and the appellate record as a whole, the Court concludes that it may determine costs and damages related to the entire appeal; that is, the Court of Appeals' mandate does not limit apportionable damages to the delay associated with Connor's motion for panel rehearing. As an initial matter, the Court of Appeals *granted* Defendants' motion for appellate sanctions. (See Fifth Cir Order, Dkt 49, at 1 ("IT IS ORDERED that appellees' motion for sanctions, attorney fees, and costs is **GRANTED**")) Defendants based their appellate motion for sanctions on the frivolousness of Connor's entire appeal, not on the delay associated with her filing a motion for panel rehearing (Defs' App Mot Sanctions, Dkt 50, Ex U, at 2 ("[T]he current appeal is frivolous on its face in that Appellant makes the same arguments that have been previously rejected by the trial court and this honorable Court"). Throughout the motion, Defendants specifically argued for sanctions pursuant to Rule 38, cited cases pertaining to frivolous appeals within the purview of Rule 38, and sought relief pursuant to Rule 38 (See *id.* ("Sanctions under Rule 38 are appropriate"), *id.* (citing cases pertaining to sanctions imposed pursuant to Rule

38), *id* at 6 ("For the foregoing reasons, this Court should find that Appellant's arguments are frivolous, that sanctions under Fed R App P 38 are warranted, that Appellees have incurred attorneys' fees and expenses as a result of Appellant's frivolous litigation ") Even Connor concedes that the appellate motion "largely" "requests sanctions and damages pursuant to Rule of Appellate Procedure 38, and only requests relief under 28 U S C § 1912 on the final page " (Resp , Dkt 61, at

7) Thus, granting Defendants' motion *was* a finding that Connor's appeal was frivolous

Connor's textual argument is therefore unavailing While the Court of Appeals' order does "remand this case to the district court to determine the amount of costs and damages to be paid to appellees, as provided by 28 U S C § 1912," courts often use Rule 38 and 28 U S C § 1912 interchangeably when the appeal is frivolous and resulted in delay *Exhibitors Poster Exch, Inc v Nat'l Screen Serv. Corp.*, 78 F R D 192, 195 (E D La 1978) ("Various courts have referred to and utilized F R A P 38 and 28 U S C § 1912 interchangeably", *see also Exhibitors Poster Exch, Inc. v. Nat'l Screen Serv Corp.*, 543 F 2d 1106, 1107 (5th Cir 1976) ("The appellees have filed in this Court a motion for damages for frivolous appeal under Rule 38, F R A P The motion is well taken We remand this case to the district court to determine the amount of costs and damages to be paid to the appellees, as provided by 28 U S C. § 1912 "); *Olympia Co. v Celotex Corp.*, 771 F 2d 888, 892-93 (5th Cir 1985) (noting that an award of damages and double costs for the filing of a frivolous appeal "may be made against an appellant under 28 U S C. § 1912 and Fed R App P 38 ") This is especially so when the appeal has resulted in delay, indeed, the only reason to distinguish between the statutory basis for sanctions and the rule would be if the Court of Appeals intended to award sanctions for a frivolous appeal without making a finding that the appeal resulted in delay *See* Fed R App P 38 advisory committee's note to 1967 adoption

Finally, in citing to § 1912, the Court of Appeals did not limit the scope of sanctions to the delay associated with Connor's filing of a motion for panel rehearing, as she contends Nothing in

Defendants' motion for appellate sanctions, which the Court of Appeals granted, limits the requested relief to the delay associated with one portion of Connor's appeal and nothing in the Court of Appeals' order imposes such a limitation either (*See* Defs' Mot App Sanctions, Dkt 50, Ex. U, 5th Cir Order, Dkt 49, at 1-2) For nearly a year, Connor prosecuted a meritless appeal with no legitimate prospect of success After filing her Notice of Appeal, (Dkt 44), she ignored the transcript order deadline, (Dkt 50, Ex A), waited six days after the Clerk sent her an email about missing the deadline to request more time, (*id.* at Ex C), delayed ordering the transcript again, (*id.* at Ex D), moved for a fifteen-day extension to file her appellate brief, (Dkt 50, Ex F), and then filed for another extension the day before her brief was due, (Dkt 50 at Ex G) When the Court of Appeals denied Connor's motion for an extension, (Dkt 50 at Ex I), Connor filed a motion to reconsider arguing that "in seventeen years of practice, she had never personally been denied an extension of time to file an opening brief " (Dkt 50, Ex J) The Court of Appeals denied her motion and dismissed her appeal for want of prosecution shortly after (Dkt 50, Ex K, L) Then, Connor filed two additional motions, which the Court of Appeals took no action on because it had dismissed her appeal (Mot Attorneys' Fees, Dkt 50, at 4) Connor then filed a motion to reopen the appeal (Dkt 50, Ex O)

The Court of Appeals granted her motion and reinstated her appeal (Dkt 50, Ex Q) After considering Connor's arguments on appeal, the Court of Appeals then affirmed this Court's order without an opinion (Dkt 50, Ex S) In an attempt to further prolong meritless litigation, Connor filed a petition for panel rehearing (Dkt 50, Ex T) At this point, after almost a year of investing time and resources into defending against Connor's various delay tactics, Defendants filed a motion for appellate sanctions, which the Court of Appeals granted. (Dkt 50, Ex. U)

Because Connor's frivolous appeal resulted in nearly a year of delay, the Court of Appeals remanded to the District Court for a determination of costs and damages pursuant to § 1912. *See*

Fed R. App. P. 38 advisory committee's note (explaining that Rule 38 and § 1912 can be used interchangeably, the only difference being that § 1912 requires a showing of delay) And the appellate record makes clear that Connor delayed prompt adjudication of this dispute throughout the entire appeal.

Finding no reason to limit the scope of sanctions to the attorneys' fees and costs associated with Connor's motion for panel rehearing, the Court will assess against Connor the attorneys' fees and costs incurred by Defendants in defending against the entire frivolous appeal.

1. Attorneys' Fees

Defendants contend that from October 1, 2018 (the date Connor filed her Notice of Appeal) through June 21, 2019 (the date the Court of Appeals issued its mandate) they incurred \$13,636.50 in reasonable and necessary attorneys' fees and \$276.27 in expenses defending against Connor's frivolous appeal (Mot. Sanctions, Dkt. 59, at 5). As supporting documentation, Defendants submit an affidavit from Defendants' counsel of record and detailed billing records (Tahirhart, Dkt. 59-2, at 1-2, Invoices, Dkt. 59-3, at 1-18). Defendants' request for attorneys' fees is based on the following rates: \$195 (later \$210) per hour for Partners, \$175 (later \$180) per hour for Senior Associates, and \$75 (later \$85) for paralegal time (Tahirhart Aff., Dkt. 59-2, at 1). Defendants' memorandum notes that these fees "are based upon a bargained-for agreement" and represent "the same fees commonly charged for this kind of work by our Firm all over the State of Texas" (Defs.' Fee Calculation Memo, Dkt. 59-4, at 2).

The Court finds that the attorneys' fees requested are reasonable in light of the well-known *Johnson* factors.² *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989). In defending against Connor's appeal, Defendants' counsel spent nearly a year reviewing and drafting responses to Connor's various requests for extensions of time and other obstinate efforts to deny Defendants a prompt resolution of the dispute (*See e.g.* Invoice, Dkt. 59-3, at 8-17). Upon examining Defendants' detailed records, the Court finds the time and labor documented to be reasonable in light of the issues involved and the skill required. *See id.* Moreover, the fees charged for the services are consistent with fees charged for such services in the geographic area amongst lawyers with similar experience, reputation, and ability. *See id.* Finally, Connor has not challenged the requested rates and fees; her response to Defendants' attorney's fees motion only contests compliance with W.D. Tex. Loc. R. CV-7(j) and the scope of the Court of Appeals' mandate.³ While she proffers her own attorneys' fee offer—\$525.00—she does not explain why Defendants' requested rates and fees, supported by invoices, affidavits, and memorandum, are unreasonable. Thus, the Court concludes that Defendants are entitled to the \$13,636.50 in requested attorneys' fees and \$276.27 in requested expenses.

² The *Johnson* factors are (1) the time and labor required to represent the client or clients, (2) the novelty and difficulty of the issues in the case, (3) the skill required to perform the legal services properly, (4) the preclusion of other employment by the attorney, (5) the customary fee charged for those services in the relevant community, (6) whether the fee is fixed or contingent, (7) the time limitations imposed by the client or circumstances, (8) the amount involved and results obtained, (9) the experience, reputation, and ability of the attorney, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989).

³ While Connor objected to one billing entry when the parties met to confer, Defendants "adjusted that particular entry, in response to [Connor's] objection, by reducing it accordingly," (Defs.' Reply, Dkt. 63, at 4), and Connor's Response in Opposition to Defendants' Motion for Attorneys' Fees and Costs, (Dkt. 61), does not raise objections with respect to the requested rates and fees, only to the manner in which these rates and fees were discussed. *See* Pl.'s Resp., Dkt. 61, at 3-4 (objecting to Defendants' "global request for \$40,000" as noncompliant with the meet and confer requirements under W.D. Tex. Loc. R. CV-7(j), but raising no other specific objections to the rates and fees incurred).

n. Costs

The Court of Appeals also remanded this case for a determination of costs (*See* Fifth Cir. Mandate, Dkt 49, at 1) "Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs" 28 U.S.C. § 1912. Federal Rule of Appellate Procedure 38 likewise allows for "just damages and single and double costs to the appellee" when an appeal is frivolous. *Garza v. Westergren*, 908 F.2d 27, 29 (5th Cir. 1990) ("[A]n award of attorney's fees and double costs pursuant to Federal Rule of Appellate Procedure 38 is proper, because this appeal is frivolous.") Defendants submitted a Bill of Costs to the Court of Appeals in the amount of \$29.40 in taxable costs, (Bill of Costs, Dkt 50, Ex. W, at 166), and ask the Court to award double costs in the amount of \$58.00 (Mot. Att'y Fees, Dkt 59, at 3-5).

The Court concludes that this case is a textbook example of a scenario where double costs are warranted. Here, Connor's appeal was not only frivolous, but also resulted in significant delay. For nearly a year, Connor prolonged unmentionous litigation, with no legitimate prospect of success. In continuing to litigate a meritless appeal and leaving no delay tactic unturned, Connor "imposed an unnecessary burden on [the Court of Appeals] and has infringed on the rights of the appellees who are entitled to a prompt adjudication of this dispute." *Haggerty v. Succession of Clement*, 749 F.2d 217, 222 (5th Cir. 1984). Accordingly, the Court determines that Defendants' request for double costs in the amount of \$58.00 is warranted (*See* Dkt 59, at 5).

B. Motion for Additional Sanctions

In response to this Court's order, (Dkt 56), Defendants filed a motion requesting additional sanctions in the form of "all of the attorneys' fees and costs incurred by Defendants in the proceedings before this honorable court" (Mot. Add. Sanctions, Dkt 60, at 2). In the alternative, Defendants ask the Court to sanction Connor by "entering an Order temporarily disbar[ri]ng [her]

from the practice of law before the Courts in the Western District of Texas for a period of not less than six (6) months" (*Id.* at 2-3). Ultimately, Defendants just want the Court to "fashion a sanction that would deter [Connor] from continuing to use the [c]ourts as a weapon of harassment against them and those who are connected with them." (*Id.* at 2). Defendants provide two possible bases for additional sanctions. First, Defendants contend that Connor, a licensed attorney, could be sanctioned pursuant to 28 U.S.C. § 1927. Second, Defendants contend the Court can sanction Connor pursuant to its inherent authority.

Connor argues that this Court lacks the authority to issue additional sanctions because the Court of Appeals' remand order only allows for an assessment of fees for delay under 28 U.S.C. § 1912, which Connor isolates to fees accrued by the Defendants after she filed a motion for panel rehearing (Pl.'s Resp., Dkt. 62, at 2). She argues that on remand a trial court cannot deviate from the mandate of the appellate court and that the Court of Appeals' mandate requires this Court to assess fees only for delay under 28 U.S.C. § 1912 (*Id.*).

As previously discussed, the Court finds nothing in the text of the Court of Appeals' remand order that limits sanctions to the delay associated with Connor's motion for panel rehearing. *See infra* Part II A 2. Moreover, the Court of Appeals' mandate covers appellate sanctions and says nothing about this Court's power to sanction Connor for her unreasonable and vexatious conduct before this Court. Because the pre-filing injunction imposed by this Court, (Order, Dkt. 42, at 9), has not deterred Connor from continuing to harass Defendants with unmentionous litigation—both in this Court and others—the Court will assess additional monetary sanctions against Connor.

1 Sanctions pursuant to 28 U.S.C. § 1927

Under 28 U.S.C. § 1927, "[a]ny attorney who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." To impose sanctions

pursuant to this provision, the conduct multiplying the proceedings must be both "unreasonable" and "vexatious." *Morrison v Walker*, 939 F 3d 633, 637–38 (5th Cir 2019) "Conduct is 'unreasonable and vexatious' if there is evidence of the 'persistent prosecution of a meritless claim' and of a 'reckless disregard of the duty owed to the court.'" *Id* "An attorney acts with "reckless disregard" of [her] duty to the court when [s]he, without reasonable inquiry, advances a baseless claim despite clear evidence undermining [her] factual contentions." *Id* at 638

In support of § 1927 sanctions, district courts often rely on "repeated filings despite warnings from the court, or other proof of excessive litigiousness, to support imposing sanctions." *Procter & Gamble Co v Amway Corp.*, 280 F 3d 519, 525 (5th Cir 2002) Before imposing such sanctions, the court must "make detailed factual findings," including "(1) identifying the sanctionable conduct as distinct from the case's merits, (2) linking the sanctionable conduct and the sanction's size, and (3) identifying the legal basis for each sanction." *Morrison*, 939 F 3d at 638 "To shift the entire cost of defense, the claimant must prove, by clear and convincing evidence, that *every fact* of the litigation was patently meritless, and counsel must have lacked a reason to file the suit and must wrongfully have persisted in its prosecution through discovery, pre-trial motions, and trial." *Procter & Gamble Co.*, 280 F 3d at 526 (emphasis in original)

For the reasons stated below, the Court concludes that Connor's conduct in filing and persistently litigating this lawsuit unreasonably and vexatiously multiplied the proceedings against Defendants and sanctions are thus warranted under § 1927

1. Reasonableness

This is Connor's third, meritless First Amendment retaliation lawsuit before this Court. In bringing this latest lawsuit, Connor knew that this Court had twice dismissed—and the Court of Appeals had previously affirmed dismissal of—Connor's nearly identical claims. *See McIntyre v Castro*, No. 1:15-CV-1100 RP, 2016 WL 1714919, at *4 (W D Tex Apr 8, 2016), *aff'd*, 670 F App'x 250

(5th Cir 2016), *reh'g denied* (Dec 9, 2016) ("*McIntyre I*"), *McIntyre v. Castro*, No. 1:16-CV-490 RP, 2017 WL 1483572, at *3 (W.D. Tex. Apr. 25, 2017), *aff'd in part sub nom. Connor v. Castro*, 719 F. App'x 376 (5th Cir. 2018) ("*McIntyre II*"). By filing this third lawsuit, Connor persistently prosecuted a mendacious claim and thus unreasonably multiplied proceedings that should have concluded with the resolution of *McIntyre I*.

ii. Vexatiousness

To impose sanctions pursuant to § 1927, counsel's multiplication of proceedings must be not only unreasonable, but also vexatious. *See Morrison*, 939 F.3d at 637–38. The Court concludes that Connor vexatiously multiplied the proceedings in reckless disregard of the duty owed to this Court. *See id.* This Court's dismissal of *McIntyre I* put Connor on notice that claims for First Amendment retaliation based on a benign litigation status update were mendacious. *See McIntyre I*, 2016 WL 1714919, at *4. *McIntyre II* did not remedy these deficiencies and this Court admonished Connor's decision to continue to assert a claim nearly identical to the one previously dismissed, questioned her motivation, and warned of possible future sanctions if she continued to exhibit conduct that "falls short of what this Court expects of its officers." *McIntyre II*, 2017 WL 1483572, at *6. Connor was not deterred. Instead, she filed a nearly identical lawsuit, indifferent to this Court's warnings (Compl., Dkt. 1). In light of the record as a whole, the Court concludes that Connor pursued this third lawsuit in bad faith and for the improper purpose of harassing and annoying Defendants. Such conduct constitutes a reckless disregard of the duty owed to this Court.

As noted in this Court's previous order, "Connor's extensive and mendacious litigation history against Defendants and other Lost Creek directors indicates a commitment to use the courts as a weapon of harassment against them" (Order, Dkt. 42, at 8–9). Despite this Court's two prior dismissals of nearly identical First Amendment retaliation claims against Defendants, she filed a third lawsuit alleging First Amendment retaliation on the basis of the same benign litigation update.

See McIntyre v. Castro, No 1-15-CV-1100 RP, 2016 WL 1714919, at *4 (W D Tex Apr 8, 2016), *aff'd*, 670 F App'x 250 (5th Cir 2016), *reh'g denied* (Dec. 9, 2016) ("*McIntyre I*"), *McIntyre v. Castro*, No 1 16-CV-490 RP, 2017 WL 1483572, at *3 (W D Tex Apr 25, 2017), *aff'd in part sub nom Connor v. Castro*, 719 F App'x 376 (5th Cir 2018) ("*McIntyre II*"). *Connor v. Stewart*, No 1 17-CV-827-RP, 2018 WL 2994644, at *1 (W D Tex June 14, 2018), *aff'd*, 770 F App'x 244 (5th Cir 2019) In doing so, she advanced a "baseless claim despite clear evidence undermining her factual contentions," namely, two prior dismissals and an affirmance by the Court of Appeals. *See id.* Throughout the litigation, Connor made claims that were "not merely meritless" but also made in bad faith for the purpose of harassing Defendants. (*See* Order, Dkt 42, at 7) Given Connor's repeated efforts to advance allegations against Defendants in bad faith at every step of the litigation, shifting the entire burden of defending this lawsuit onto Connor is not only appropriate, but necessary to deter Connor from harassing Defendants with more meritless litigation in the future.

Moreover, the monetary sanctions issued by state courts in similar litigation have not deterred Connor from filing this action, indicating the need for additional monetary sanctions. (*See* Orders, Dkt 38-2) Even more troubling, Connor recently misrepresented the record in this case in a related state court action, attesting to a state court judge that this Court had dismissed her state law claims, when in fact this Court had merely declined to exercise supplemental jurisdiction over them and remanded them back to Texas state court. (*See* Advisory to the Court, Dkt 67, at 1-5), *compare McIntyre II*, 2017WL 1483572, at *5 ("In light of the dismissal of Plaintiffs' federal claims, this Court will decline to exercise supplemental jurisdiction. Accordingly, the state law claims against Defendants are properly remanded back to Texas state court.") *with* Connor's Request for Abstract Judgment, Dkt 67-1, at 1 ("[T]he record clearly indicates that the claims dismissed by the Hon Karin Crump had already been dismissed by the Western District of Texas, and therefore, the order is subject to collateral attack and injunctive relief") As this Court has already admonished, "Connor

has the legal training and experience to understand that the state-law portion of Defendants' motion was not adjudicated by this Court, which remanded Connor's state-law claims" (Dkt 31 at 7). Therefore, Defendants' requested sanctions are also appropriate to deter Connor from misrepresenting this Court's record for the purpose of harassing defendants in an alternate forum.

Finally, Connor's frivolous filings have needlessly diverted this Court's time and resources away from the hundreds of meritorious cases and controversies on its docket (*See* Order, Dkt 42, at 8 (discussing the burden that Connor's high volume of motions in this action and previous actions have had on this Court)). Thus, in continuing to prosecute her claims in bad faith, Connor not only saddled Defendants with the burden of defending against frivolous claims, but she also impeded this Court's ability to direct its attention to the meritorious plaintiffs on its docket in need of relief. Connor has imposed a similar burden on the Texas state court system. *See id.* (discussing the burden Connor's litigation tactics have placed on the state court system, particularly the five-hundred-page state court record in *McIntyre II*). Repeated admonitions and the threat of sanctions both by this Court and the Court of Appeals have not deterred Connor from continuing to litigate in bad faith. *McIntyre II*, 2017 WL 1483572, at *6 ("In short, the Court is troubled by Connor's conduct in this litigation the Court will not impose sanctions at this time, should similar concerns arise if this matter is again before this Court, the Court will not hesitate to consider sanctions—whether on motion or on its own initiative"), (*see also* Fifth Cir. Mandate, Dkt 49, at 2 ("[A]ppellant, a lawyer representing herself pro se, is cautioned that any further prolongation of this case will likely result in additional sanctions"). The Court concludes that severe monetary sanctions are necessary to send the message to Connor that bad faith litigation brought for the purpose of harassment will not be tolerated, especially by an officer of the Court. Thus, this Court will assess the full cost of defending this suit against Connor.

In defending against Connor's baseless claims before this Court, Defendants incurred a total of \$28,646.50 in reasonable and necessary attorneys' fees and \$435.98 in expenses (Mot. Add Sanctions, Dkt. 60, at 6). In reviewing the submitted invoices, affidavit, and memorandum in support of this figure, the Court determines that both the work expended and the rates assessed are reasonable for the geographic area. Because Connor has not disputed the reasonableness of these sums and because the record demonstrates that "every facet" of Connor's third lawsuit was "patently meritless" and brought in bad faith for the improper purpose of harassing Defendants, (*see* Order, Dkt. 42, at 4-9), the Court concludes shifting the entire cost of the defense to Connor is appropriate pursuant to 28 U.S.C. § 1927.⁴ *See Procter & Gamble Co.*, 280 F.3d at 526. In addition to these monetary sanctions, the Court reminds Connor that a pre-filing injunction remains in place

Connor may not file a civil action against Defendants or other officers of the Lost Creek Municipal Utility District, directly or indirectly, in the Western District of Texas without receiving written leave from a federal district judge for this district. Any future complaint against Defendants or other officers of the Lost Creek Municipal Utility District in this district shall be accompanied by a motion for leave, and no summons shall issue unless leave is granted.

(Dkt. 42 at 9)

To echo the Court of Appeals, "[t]his case is over."

III. CONCLUSION

Accordingly, **IT IS ORDERED** that Defendants' Motion for Attorneys' Fees and Costs, (Dkt. 59), is **GRANTED**.



⁴ To the extent Connor's conduct is not covered by one of the other sanctioning provisions, this Court relies on its inherent power to impose attorneys' fees as a sanction for bad-faith conduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991) ("There is, therefore, nothing in the other sanctioning mechanisms or prior cases interpreting them that warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct. This is plainly the case where the conduct at issue is not covered by one of the other sanctioning provisions. But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules.")

IT IS FURTHER ORDERED that Defendants' Motion for Additional Sanctions, (Dkt 60),
is **GRANTED**

Defendants are entitled to an award of **\$13,636.50 in attorneys' fees, \$276.27 in expenses, and double costs in the amount of \$58.00** for the damages incurred in defending against Connor's frivolous appeal

Defendants are further entitled to **\$28,646.50 attorneys' fees and \$435.98 in expenses** incurred in defending this matter before this Court

SIGNED on January 27, 2020


ROBERT PITMAN
UNITED STATES DISTRICT JUDGE
A true copy of the original, I certify.
Clerk, U.S. District Court


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Travis County, Texas

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Account

Property ID: 108378 Legal Description: LOT 14 BLK 4 LOST CREEK SEC 1
 Geographic ID: 0109280314 Zoning:
 Type: Real Agent Code:
 Property Use Code:
 Property Use Description:

Protest

Protest Status:
 Informal Date:
 Formal Date:

Location

Address: 6203 OLYMPIC OVERLOOK Mapco
 AUSTIN, TX 78746
 Neighborhood: N5200 Map ID: 011037
 Neighborhood CO: N5200

Owner

Name: CONNOR MADELEINE B Owner ID: 1739050
 Mailing Address: 6203 OLYMPIC OVERLOOK % Ownership: 100.0000000000%
 AUSTIN TX 78746 7229
 Exemptions: HS

(+) Improvement Homesite Value: + N/A
 (+) Improvement Non-Homesite Value: + N/A
 (+) Land Homesite Value: + N/A
 (+) Land Non-Homesite Value: + N/A Ag / Timber Use Value
 (+) Agricultural Market Valuation: + N/A N/A
 (+) Timber Market Valuation: + N/A N/A

(=) Market Value: = N/A
 (-) Ag or Timber Use Value Reduction: - N/A

(-) Appraised Value: = N/A
 (-) HS Cap: - N/A

(=) Assessed Value: = N/A

Owner: CONNOR MADELEINE B
 % Ownership: 100.0000000000%

Total Value: N/A

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
02	CITY OF AUSTIN	N/A	N/A	N/A	N/A
03	TRAVIS COUNTY	N/A	N/A	N/A	N/A
08	EANES ISD	N/A	N/A	N/A	N/A
0A	TRAVIS CENTRAL APP DIST	N/A	N/A	N/A	N/A
21	TRAVIS COUNTY HEALTHCARE DISTRICT	N/A	N/A	N/A	N/A
68	AUSTIN COMM COLL DIST	N/A	N/A	N/A	N/A
6P	LOST CREEK LIMITED DISTRICT	N/A	N/A	N/A	N/A
	Total Tax Rate:	N/A			

Taxes w/Current Exemptions: N/A

Taxes w/o Exemptions: N/A

Improvement #1: TEAM DOWLING State Code: 48 Living Area: 2022 (sqft) Value: 1,400

Type	Description	Class CD	Exterior Wall	Year Built	SQFT
11	1st Floor	WW 1		1976	1230.0
11	2nd Floor	WW 5		1976	623.0
11	PORCH DECK ETC	11 8		1976	110.0
11	CARAGE ATT 1ST F	11 8		1976	171.0
11	TRAIL DISRUPTION	11		1976	252.0
257	BATH ROOM	2		1976	10
257	CLO CLO CLOVER	2 8		1976	110.0
257	CONTRACT	2		1976	10
257	REPAIRS	2		1976	4.0

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	LAND	Land	0.3076	13400.00	0.00	0.00	N/A	N/A

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2020	N/A	N/A	N/A	N/A	N/A	N/A
2019	\$261,000	\$420,000	0	681,000	\$100	\$680,900
2018	\$199,000	\$420,000	0	619,000	\$0	\$619,000
2017	\$260,000	\$360,000	0	620,000	\$0	\$620,000
2016	\$435,374	\$210,000	0	645,374	\$11,677	\$633,697
2015	\$449,122	\$180,000	0	629,122	\$53,034	\$576,088

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	10/3/2017	WD	WARRANTY DEED	VANWISSE DEWITT	CONNOR MADELEINE B			2017160495
2	3/1/2013	WD	WARRANTY DEED	NCM ACQUISITIONS LLC	VANWISSE DEWITT			2013037759TR
3	12/4/2012	MS	MISCELLANEOUS	BAE KUM YEO	NCM			2012209519TR

2/28/2020

Travis CAD - Property Details

& KYEONG J
ACQUISITIONS
LLC

2020 - Values not available

Account

Property ID: 111538 Legal Description: LOT 5 BLK 7 LOST CREEK SEC 2
 Geographic ID: 0111280117 Zoning:
 Type: Real Agent Code:
 Property Use Code:
 Property Use Description:

Protest

Protest Status:
 Informal Date:
 Formal Date:

Location

Address: 6304 WHITEMARSH VLY WALK Mapco:
 TX 78746
 Neighborhood: N5200 Map ID: 011037
 Neighborhood ED: N5200

Owner

Name: CONNOR MADELINE G Owner ID: 1485660
 Mailing Address: 6203 OLYMPIC OVERLOOK % Ownership: 100.000000000000
 AUSTIN, TX 78746-7229

Exemptions:

(+) Improvement Homesite Value	+	N/A	
(+) Improvement Non-Homesite Value:	+	N/A	
(+) Land Homesite Value:	+	N/A	
(+) Land Non Homesite Value:	+	N/A	Ag / Timber Use Value
(+) Agricultural Market Valuation	+	N/A	N/A
(+) Timber Market Valuation:	+	N/A	N/A

(=) Market Value:	=	N/A
(-) Ag or Timber Use Value Reduction:	-	N/A

(-) Appraised Value:	=	N/A
(-) HS Cap:	-	N/A

(=) Assessed Value	=	N/A
--------------------	---	-----

Owner: CONNOR MADELINE G
 % Ownership: 100.000000000000

Total Value: N/A

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax
02	CITY OF AUSTIN	N/A	N/A	N/A	N/A
03	TRAVIS COUNTY	N/A	N/A	N/A	N/A
08	EANES ISD	N/A	N/A	N/A	N/A
0A	TRAVIS CENTRAL APP DIST	N/A	N/A	N/A	N/A
27	TRAVIS COUNTY HEALTHCARE DISTRICT	N/A	N/A	N/A	N/A
68	AUSTIN COMM COLL DIST	N/A	N/A	N/A	N/A
6P	LOST CREEK LIMITED DISTRICT	N/A	N/A	N/A	N/A
Total Tax Rate:		N/A			

Taxes w/Current Exemptions: N/A

Taxes w/o Exemptions: N/A

Improvement #1: 1 FARM DWELLING State Code: 41 Living Area: 2152.0 sqft Value: N/A

Type	Description	Class CD	Exterior Wall	Year Built	SQFT
11	1st Floor	WW		1981	2152.0
11	PORCH OPEN 1ST FL	11		1981	28.0
11	GARAGE ATT 1ST FL	WW		1981	574.0
11	HVAC RESIDENTIAL			1981	2152.0
11	BATHROOM	11		1981	2.0
12	DECK UNCOVERED	12		1981	193.0
12	DECK UNCOVERED	12		1981	40.0
22	FIREPLACE	22		1981	1.0
11	MASONRY TRIM M	11		1981	405.0
112	TERRACE UNCOVERED	112		1981	130.0
112	DECK UNCOVERED	112		1981	223.0
112	DECK UNCOVERED	112		1981	70.0

#	Type	Description	Acres	Sqft	Eff Front	Eff Depth	Market Value	Prod. Value
1	LAND	Land	0.3595	15660.00	116.00	135.00	N/A	N/A

Year	Improvements	Land Market	Ag Valuation	Appraised	HS Cap	Assessed
2020	N/A	N/A	N/A	N/A	N/A	N/A
2019	\$210,200	\$367,500	0	\$77,700	\$0	\$577,700
2018	\$238,597	\$367,500	0	\$66,097	\$0	\$606,097
2017	\$281,174	\$283,500	0	\$64,674	\$225,996	\$338,678
2016	\$331,818	\$165,375	0	\$97,193	\$189,304	\$307,889
2015	\$342,296	\$141,750	0	\$84,046	\$204,147	\$279,899

#	Deed Date	Type	Description	Grantor	Grantee	Volume	Page	Deed Number
1	10/26/2007	DV	DIVORCE	CONNOR CABRACH J &	CONNOR MADELINE G			DV#D-1-FM-06-003296

2/26/2020

Travis CAD - Property Details

2	8/2/2002	WD	WARRANTY DEED	MADELEINE G ORTMAN THOMAS E	CONNOR CABRACH J & MADELEINE G	00000	00000	2002143357TR
1	3/15/1989	AD	ASSUMPTION DEED	ORTMAN THOMAS E & DANIEL ORTMA	ORTMAN THOMAS E	10942	00027	

Exhibit “B”

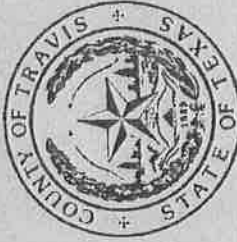
ELVA L. PRICE

District Clerk, Travis County

O. Box 679003

Austin, Texas 78767-9003

2-854-9457



Received From:

Madeline B. Connor

Case No.:

D-1- CN-15-003714

Received For:

Passport [] Photo [] Other [X]

Other:

Supervisor's Photo

Received By

Deputy District Clerk:

Sandy Cape

RECEIPT No. 00303

Date:

08/28/2020

Amount:

30,000

Payment Type:

Cash [] Check [X] M.O. [] Credit []

CASH : Amount of change returned

CHECK or M.O. #: 9230820220

Check or M.O.

D/L #

Information:

D.O.B.

Phone #

CREDIT CARD REF. #

Exhibit “C”

> Legals (/tx/legals/search)

NOTICE OF SALE OF REAL ESTATE- COUNTY OF TRAVIS-STATE OF TEXAS

By virtue of a certain WRIT OF EXECUTION issued by the 419TH DISTRICT COURT of Travis County, Texas, on the 24TH day of JUNE, 2020 in certain causes numbered D-1-GN-15-003714 and 1:17-CV-00827, respectively, wherein ERIC CASTRO AND NANCY NAEVE AND GARY SERTICH AND LEAH STEWART AND CHARLES MCCORMICK is Defendant and DAVID MCINTYRE AND MADELEINE CONNOR is Plaintiff, found in favor of said Defendant for the sum of: - For cause numbered D-1-GN-15-003714: TWO THOUSAND ONE HUNDRED TWENTY FOUR AND 00/100 DOLLARS (\$2,124.00) PLUS \$76.67 IN COSTS, \$500.00 IN SANCTIONS, \$15,000.00 IN ATTORNEY'S FEES FOR THE UNSUCCESSFUL APPEAL IN THE THIRTEENTH COURT OF APPEALS, \$20.00 IN COSTS FOR THE THIRTEENTH COURT OF APPEALS COSTS, \$10,000.00 FOR THE TEXAS SUPREME COURT COSTS ON AN ORDER GRANTING DEFENDANT'S MOTION TO DISMISS - AND, For cause numbered 1:17-CV-00827: THIRTEEN THOUSAND SIX HUNDRED THIRTY SIX 50/100 DOLLARS (\$13,636.50) IN ATTORNEY'S FEES FOR APPEAL, \$276.27, \$58.00 IN DOUBLE COSTS IN APPEAL COSTS, \$28,646.50 IN ATTORNEY'S FEES FOR DISTRICT LAWSUIT (SANCTIONS), \$435.98 IN COSTS FOR DISTRICT LAWSUIT (SANCTIONS) - That being the amount of the judgment recovered by said Plaintiff, in the 419th District Court of Travis County, Texas on the 23th day of JUNE, 2017, and the United States District Court for the Western District of Texas Austin Division, Texas, on the 27th day of JANUARY, 2020, respectively. - I, DEPUTY JUAN ARISPE #327 on the 29TH day of JULY, 2020 have levied upon, and will on the 1ST day of SEPTEMBER, 2020 between the hours of 10:00 a.m. and 4:00 p.m. on said day, at the courthouse steps of said county, offer for sale at public auction for cash to the highest bidder, all the right, title and interest of Defendant in and to the following described property, levied upon as the property of Defendant, to wit: - LOT 5 BLK 7 LOST CREEK SEC 2; - COMMONLY KNOWN AS 6304 WHITEMARSH VLY WALK, AUSTIN, TEXAS 78746 - Note: On the property sold there are no warranties, expressed or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. You have bought the property "as is". Buyers are further advised that the purchase of the property at the Constable's sale may not extinguish any liens or security interest on or in the property. You have simply purchased whatever interest the defendant had in the property. If you have any questions, you should consult the counsel of your choice. - The purchaser will be required to produce an unexpired written statement from the Tax-assessor-collector of the County in which the sale is conducted that there are no delinquent ad valorem taxes owed to the county, school district or municipality. - The above sale to be made by me to satisfy the above-described judgment for: - Cause numbered D-1-GN-15-003714: TWO THOUSAND ONE HUNDRED TWENTY FOUR AND 00/100 DOLLARS

Exhibit “E”

NO. D-1-GN-15-003714

**In re DAVID McINTYRE,
Petitioner**

§
§
§
§
§
§

**IN THE DISTRICT COURT OF

419th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS**

DEFENDANTS' SECOND AMENDED PLEA TO THE JURISDICTION

TO THE HONORABLE JUDGE SAID OF COURT

NOW COMES, Movant TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL ("Movant") by and through former Defendants ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH STEWART, and CHARLES McCORMICK, (collectively referred to as "Defendants") regarding additional collection of judgment against Plaintiff MADELEINE CONNOR, and would respectfully show the Court as follows:

I.
FACTS

1. Plaintiff Madeleine Connor ("Connor") is attempting to persuade this Court to grant injunctive relief to enjoin the Sheriff's Sale of her non-exempt rent house that is scheduled for September 1, 2020.

2. On August 28, 2020, Connor filed what is purported to be a "Supersedeas" in this matter and deposited the sum of \$30,000.00 with the District Clerk. The "Supersedeas" appears to be an attempt to enjoin a federal judgment entered by the Honorable United States District Judge Pitman based on sanctions for a frivolous appeal to the 5th Circuit Court of Appeals and sanctions pursuant to 28 U.S.C. § 1927 for her conduct in Judge Pitman Court.

3. Later that day, Connor filed a *Motion for Findings per Texas Property Code § 52.0011*. Connor then attempted to obtain a hearing seeking a Temporary Restraining Order without first consulting the undersigned.
4. On August 31, 2020, Connor filed a Motion to for Stay of Execution.
5. Abstracts of Judgment have been properly filed for Judge Pitman’s Order for the sum of \$43,053.25 and properly recorded with the Travis County Clerk’s Office and for a sanctions Order entered in state court for \$27,700.67. The state court judgment is final having been unsuccessfully appealed to the Texas Supreme Court.
6. This Court lacks subject matter jurisdiction to enter a temporary restraining order because Federal Rule of Civil Procedure 62 provides the sole method to stay the execution of a federal judgment and should be sought from the United States District Court.

II.

SECOND AMENDED PLEA TO THE JURISDICTION

7. The Court should grant Movants’ Second Amended Plea to the Jurisdiction as this Court lacks subject matter jurisdiction to stay the execution of a federal judgment.

The trial court must determine at its earliest opportunity whether it has the constitutional or statutory authority to decide the case before allowing the litigation to proceed. *Austin & N.W.R. Co. v. Cluck*, 97 Tex. 172, 77 S.W. 403, 405 (1903) (“[T]here can be no doubt that the courts of Texas must look to the Constitution of this state, the enactments of the Legislature, and the common law for their authority to proceed”; *see also State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex.1994) (“As a general proposition, before a court may address the merits of any case, the court must have jurisdiction over the party or the property subject to the suit, jurisdiction over the subject matter, jurisdiction to enter the particular judgment, and capacity to act as a court.”); *Gentry v. Bowser*, 2 Tex.Civ.App. 388, 21 S.W. 569, 570 (Fort Worth 1893, no writ) (“Certainly the court has the right to hear the necessary evidence to enable it to decide as to whether or not it has power to try the case it is sought to have it adjudicate, whether the allegations disclosing such want of jurisdiction appear in the petition of the plaintiff, or in the plea to the jurisdiction by the defendant.”)).

Texas Dep’t of Parks & Wildlife v. Miranda, 133 S.W.3d 217, 226 (Tex. 2004).

8. Federal Rule of Civil Procedure 62 provides for the staying of the execution of a federal judgment. The Rule states:

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay. Except as provided in Rule 62(c) and (d), execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise.

(b) Stay by Bond or Other Security. At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

(c) Stay of an Injunction, Receivership, or Patent Accounting Order. Unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

(1) an interlocutory or final judgment in an action for an injunction or receivership; or

(2) a judgment or order that directs an accounting in an action for patent infringement.

(d) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights. If the judgment appealed from is rendered by a statutory three-judge district court, the order must be made either:

(1) by that court sitting in open session; or

(2) by the assent of all its judges, as evidenced by their signatures.

(e) Stay Without Bond on an Appeal by the United States, Its Officers, or Its Agencies. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

(f) Stay in Favor of a Judgment Debtor Under State Law. If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.

(g) Appellate Court's Power Not Limited. This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings--or suspend, modify, restore, or grant an injunction--while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) Stay with Multiple Claims or Parties. A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or

judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

Fed. R. Civ. P. 62; *MM Steel, L.P. v. JSW Steel (USA) Inc.*, 771 F.3d 301, 303 (5th Cir. 2014).

Rule 62 governs the stay of proceedings to enforce a judgment. “Rule 62(d) establishes a general rule that losing parties in the district court can obtain a stay pending appeal only by giving a supersedeas bond.” *Enserch Corp. v. Shand Morahan & Co.*, 918 F.2d 462, 463–64 (5th Cir.1990).

Id. The Federal District Court retains jurisdiction to entertain a motion to stay a judgment or order being appealed. *See Farmhand, Inc. v. Anel Eng'g Indus.*, 693 F.2d 1140, 1145-46 (5th Cir.1982) (*citing Fed. R.App. P. 8(a)*). “Rule 8(a) of the Federal Rules of Appellate Procedure requires that a request for a stay ““must ordinarily be made in the first instance in the district court.”” *United States v. Goltz*, No. CIV.A. SA-06-CA-503X, 2007 WL 295558, at *2 (W.D. Tex. Jan. 25, 2007).

9. If Connor wishes to stay the execution of the federal judgment, she must obtain a bond and have it approved by the Federal District Court. This Court lacks subject matter jurisdiction and should grant Defendants’ Second Amended Plea to the Jurisdiction.

WHEREFORE, PREMISES CONSIDERED, Movant TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL by and through former Defendants ERIC CASTRO, NANCY NAEVE, GARY SERTICH, LEAH STEWART, and CHARLES McCORMICK asks this Honorable Court to grant its Second Amended Plea to the Jurisdiction, dismiss Plaintiff Connor’s claims with prejudice and that Movant have such other and further relief, at law or in equity, general or special, to which it may show itself justly entitled.

Respectfully submitted,

DENTON NAVARRO ROCHA BERNA & ZECH
A Professional Corporation
2517 N. Main Avenue
San Antonio, Texas 78212
(210) 227-3243
(210) 225-4481 Facsimile
lfdenton@rampagelaw.com
smtschirhart@rampagelaw.com



BY: _____

LOWELL F. DENTON
State Bar No. 05764700
SCOTT M. TSCHIRHART
State Bar No. 24013655

*Attorneys for Movant Texas Municipal
League Intergovernmental Risk Pool by and
through former Defendants Eric Castro,
Nancy Naeve, Gary Sertich, Leah Stewart
and Charles McCormick*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served in accordance with the Texas Rules of Civil Procedure on this 31st day of August 2020, to the following:

Madeline Connor
Attorney at Law
P.O. Box 161962
Austin, Texas 78716-1962

E-FILE NOTIFICATION
AND/OR EMAIL: mgbconnor@yahoo.com

David Rogers
Law Offices of David Rogers
595 Round Rock West Drive, Suite 102
Round Rock, Texas 78681

E-FILE NOTIFICATION

David McIntyre, *Pro Se*
6201 Augusta National Dr.
Austin, Texas 78746-6108

FIRST-CLASS MAIL

David McIntyre, *Pro Se*
7010 Riverside Drive
Berwyn, IL 60402

FIRST-CLASS MAIL



SCOTT M. TSCHIRHART

Exhibit “F”

No. D-1-GN-15-003714

DAVID McINTYRE, et al.,	§	IN THE DISTRICT COURT
<i>Plaintiffs</i>	§	
vs.	§	
	§	419 th JUDICIAL DISTRICT
ERIC CASTRO, et al.,	§	
<i>Defendants</i>	§	TRAVIS COUNTY, TEXAS

ORDER DENYING MOTION FOR STAY OF EXECUTION

On this day came to be heard the "*Motion for Stay of Execution*" filed by plaintiff seeking a stay of the sale of certain non-exempt real property in Travis County, Texas.

Plaintiff (Movant), appeared in person and through counsel. MR. DAVID ROGERS and announced ready.

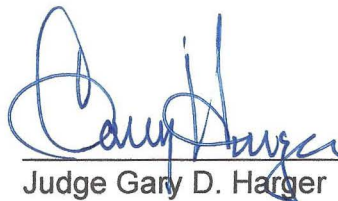
Defendant appeared through counsel, MR. SCOTT M. TSCHIRHART and announced ready.

A record of the hearing was taken by the official reporter for the 419th Judicial District Court, Leah Hayes.

All matters of law and fact were submitted to the Court.

Upon consideration of the pleadings, statutory authority cited by counsel, argument of counsel and the supplemental briefs of both parties, the Court is of the opinion the Motion for Stay of Execution should, and hereby is, DENIED.

Signed this the 31st day of August, 2020.



Judge Gary D. Harger
Judge Presiding by Assignment

Exhibit “G”



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MADELEINE CONNOR,

Plaintiff,

v

LEAH STEWART,
ERIC CASTRO, and
CHUCK MCCORMICK,

Defendants

§
§
§
§
§
§
§
§
§
§

1 17-CV-827-RP

ORDER

Before the Court are Defendants Leah Stewart, Eric Castro, and Chuck McCormick's (collectively, "Defendants") Amended Motion for Attorneys' Fees, (Dkt 59), and Motion for Additional Sanctions, (Dkt 60) Having considered the parties' briefing, the record, and the relevant law, the Court will grant both motions

I. BACKGROUND

Plaintiff Madeleine Connor ("Connor") lives in the Lost Creek Municipal Utility District ("Lost Creek") and Defendants Leah Stewart, Eric Castro, and Chuck McCormick (collectively, "Defendants") are all directors of Lost Creek (Compl, Dkt 1, at 1–2) Connor has now sued Defendants three times in this Court for the same cause of action *See McIntyre v. Castro*, No 1-15-CV-1100 RP, 2016 WL 1714919, at *4 (W D Tex Apr 8, 2016), *aff'd*, 670 F App'x 250 (5th Cir 2016), *reh'g denied* (Dec 9, 2016) ("McIntyre I"), *McIntyre v Castro*, No 1 16-CV-490 RP, 2017 WL 1483572, at *3 (W D Tex Apr 25, 2017), *aff'd in part sub nom. Connor v Castro*, 719 F App'x 376 (5th Cir 2018) ("McIntyre II"), *Connor v Stewart*, No 1 17-CV-827-RP, 2018 WL 2994644, at *1 (W D Tex June 14, 2018), *aff'd*, 770 F App'x 244 (5th Cir 2019) In all three cases, the Court determined

that Connor's claims were not well-grounded in law or fact and dismissed Connor's lawsuits for failure to state a plausible claim for relief *See id.*

In *McIntyre I*, Connor alleged that Defendants sent a "pejorative" email with "evil intent" to Lost Creek residents "purporting to be an 'update' about" a lawsuit she filed against Defendants (*McIntyre I*, Compl., Dkt. 5, at 1). Upon reviewing the email, the Court determined that it was not pejorative, but rather that it "simply state[d] the basis of Plaintiffs'¹ claims and that Defendants rebut them." *McIntyre I*, 2016 WL 1714919, at *4. The Court dismissed Connor's claim, holding that her allegations fell "well short of supporting a claim for First Amendment retaliation." *Id.* Connor appealed. The United States Court of Appeals for the Fifth Circuit ("Court of Appeals") affirmed the Court's opinion, specifically finding that Connor's allegations did "not constitute retaliation." *McIntyre v. Castro*, 670 F. App'x 250, 251 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016).

One week after the Court issued its order in *McIntyre I*, and while her appeal remained pending, Connor sued Defendants again (*See McIntyre II*, Notice of Removal, Dkt. 1, at 3). Connor's *McIntyre II* complaint—her seventh amended petition in state court—alleged a First Amendment retaliation claim "nearly identical" to her claim in *McIntyre I*. *McIntyre II*, 2017 WL 1483572, at *4. The Court again dismissed the claim. *Id.* Connor then moved to amend her complaint to add another First Amendment retaliation claim, the Court denied her motion. *Id.* at *6. Connor appealed that decision. *Connor v. Castro*, 719 F. App'x 376, 379 (5th Cir. 2018). The Court of Appeals affirmed this Court's decision, agreeing that it would have been futile to permit her to add the claim. *Id.* at 380.

In *McIntyre II*, the Court found that the record gave "the impression that the current litigation may be motivated as much or more by animosity between Connor and the Defendants

¹ There were two named plaintiffs in *McIntyre I* and *McIntyre II*—Madeleine Connor and David McIntyre. *See McIntyre I*, 2016 WL 1714919, *McIntyre II*, 2017 WL 1483572.

than any legally cognizable injury Plaintiffs may have suffered ” *McIntyre II*, 2017 WL 1483572, at *6. The Court stated that Connor’s conduct, which included her “presentation of an objectively benign e-update as defamatory,” was troubling. *Id.* In continuing “to engage in motion practice to add allegations that [were] plainly insufficient”—particularly in light of this Court’s prior order, which was subsequently affirmed by the Court of Appeals—this Court found that her conduct fell “well short of what this Court expects of its officers ” *Id.* While the Court declined to sanction Connor at that time, it warned her it would “not hesitate to consider sanctions—whether on motion or on its own initiative” should Connor continue to litigate this issue in the future. *Id.*

Despite that warning, Connor filed a third lawsuit in this Court, again alleging a First Amendment retaliation claim on the basis of an objectively benign litigation update. (Am. Compl., Dkt. 8, at 2). In doing so, she repeated a claim that had been twice rejected by this Court and once by the Court of Appeals. *McIntyre I*, 2016 WL 1714919, at *4; *McIntyre II*, 2017 WL 1483572, at *4; *McIntyre v. Castro*, 670 F. App’x 250, 251 (5th Cir. 2016), *reh’g denied* (Dec. 9, 2016). Her only new theory of retaliation—that Defendants intended to punish her by filing a valid defensive motion in a lawsuit that she brought against them—was one the Court determined Connor, a lawyer, should understand to be frivolous. (Order, Dkt. 31, at 10). Again, this Court dismissed Connor’s action as meritless. (*Id.*)

In dismissing Connor’s third baseless lawsuit, this Court recited her history of vexatious litigation and found that Connor filed the action for “the improper purpose of harassing and imposing litigation costs on Defendants ” (*Id.*). The Court determined that the appropriate Rule 11 sanction was to require Connor to pay Defendants’ reasonable attorneys’ fees and expenses related to this action. (*Id.* at 11). The Court then ordered Defendants to submit a motion for reasonable attorneys’ fees and expenses. (*Id.* at 12). Concluding that a pre-filing injunction might be appropriate to deter Connor from using the courts “as a weapon of harassment” against the Defendants, the

Court also ordered the parties to attend a hearing to consider the proper scope of a pre-filing injunction (*Id.* at 8, 12)

Pursuant to the Court's order, Defendants filed a motion requesting \$16,235.16 in reasonable attorneys' fees and expenses (Mot. Att'y Fees, Dkt. 32, at ¶ 18). The Court ultimately denied Defendants' motion because they failed to comply with Rule 11's safe harbor provision (Order, Dkt. 42, at 3). However, after giving Connor the required notice and hearing, (Dkt. 31, 40), the Court imposed a pre-filing injunction against Connor *sua sponte*, barring her from filing any civil action "against Defendants or other officers of the Lost Creek Municipal Utility District, directly or indirectly, in the Western District of Texas without receiving written leave from a federal district judge for this district" (Order, Dkt. 42, at 9).

Connor appealed that order (Dkt. 44). Her appeal was dismissed because she didn't timely file her brief (Dkt. 47). The Fifth Circuit subsequently reinstated her appeal (Dkt. 48). The Fifth Circuit then affirmed this Court's order without an opinion (Dkt. 50, Ex. S). She petitioned for rehearing by the panel. (*Id.* at Ex. T). After nearly a year of defending the appeal, Defendants then filed a motion for appellate sanctions (*Id.* at Ex. U). In that motion, Defendants expressly argued that Connor's entire appeal was frivolous and sought sanctions pursuant to Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1912. (Dkt. 50, at 1 ("Now come Appellees, Leah Stewart, Eric Castro and Chuck McCormick and file their Motion for Sanctions pursuant to Federal Rule of Appellate Procedure 38", "The current appeal is frivolous on its face in that Appellant makes the same arguments that have been previously rejected by the trial court and this honorable Court", "[T]his Court [should] remand this case to the district court 'to determine the amount of costs and damages to be paid to appellees, as provided by 28 U.S.C. § 1912'"))

The Court of Appeals granted Defendants' motion and remanded to the district court "to determine the amount of costs and damages to be paid to appellees, as provided by 28 U.S.C.

§ 1912 ” (Dkt 49 at 1) The Court of Appeals further cautioned Connor, “a lawyer representing herself pro se,” that “any further prolongation of this case will likely result in additional sanctions ” (*Id.* at 2) Except for “the determination of costs and sanctions by the district court on remand,” the Court of Appeals stated, in all caps, “THIS CASE IS OVER ” (*Id.*)

On remand, Defendants filed two motions for attorneys’ fees and costs, (Dkt 50, 53), neither of which complied with this Court’s Local Rules W D Tex Loc. R CV-7(j)(1) The Court ordered Defendants to properly confer with Connor and file an amended motion for attorneys’ fees, costs, and sanctions that adhered to the local rules (Order, Dkt 56, at 2) The Court further ordered the parties to “advise the Court what other sanctions, if any, they believe to be appropriate ” (*Id.* at 1) Defendants then filed an Amended Motion for Attorneys’ Fees, (Dkt. 59), and a Motion for Additional Sanctions, (Dkt 60) Those motions are now before the Court, (Mot Att’y Fees, Dkt 59, Mot. Sanctions, Dkt 60) First, the Court will turn to Defendants’ Motion for Attorneys’ Fees, (Dkt 59), which requests attorneys’ fees, costs, and expenses incurred defending against Connor’s appeal Second, the Court will address Defendants’ Motion for Additional Sanctions, (Dkt. 60), which requests sanctions in the form of attorneys’ fees incurred defending this lawsuit before this Court

II. DISCUSSION

A. Motion for Attorneys’ Fees, Costs, Expenses

Pursuant to the Court of Appeals’ mandate, Defendants seek \$13,636 50 in attorneys’ fees, \$276 27 in expenses, and double costs in the amount of \$58 00 for damages incurred in defending against Connor’s appeal from October 1, 2018, the date Connor filed her Notice of Appeal, (Dkt 44), and June 21, 2019, the date the Court of Appeals granted Defendants’ motion for sanctions and remanded to the District Court for a determination of the amount of costs and damages, (Dkt 49) (Mot Att’y Fees, Dkt 59, at 4–5)

Connor contends that the Court should deny Defendants' request for attorneys' fees and costs because it "does not comply with this District's rule concerning the form, content, timeframe, or conference provisions of a request for attorney's fees" (Pl's Resp, Dkt 61, at 2 (citing W D Tex Loc R CV-7(j)(1)-(3))). Alternatively, Connor asks that the Court limit Defendants' fees and costs to those associated with the delay caused by her filing a motion for rehearing rather than awarding Defendants the fees and costs accrued in defending against the appeal as a whole (*Id.* at 12). The Court finds both of these arguments lacking and discusses each of them in turn below.

1 Defendants' Motion Complies with the Local Rules

Connor contends that Defendants' motion for attorneys' fees should be denied—"save perhaps double costs, which 28 U.S.C. § 1912 permits, presumably without any form of motion being timely and compliantly filed"—because it does not comply with Local Rule CV-7(j). On this point, Connor makes three arguments. First, she contends that Defendants did not satisfy the "meet and confer" requirement under the local rules because "Defendants' counsel refused to have any substantive discussions with Plaintiff regarding their request for fees and sanctions and walked out of the conference after the passage of only fifteen minutes" (Dkt 61 at 3–5). Second, she argues that Defendants' motion did not certify her specific objections to Defendants' requested attorneys' fees, objections she alleges she could not specifically articulate "because only an oral number was proposed, with no detail" (Dkt 61 at 6). Third, Connor contends that while Defendants' motion includes a billing document, it does not comply with the drafting and certification requirements, specifically, she argues that attaching a 22-page billing statement without "a more easily readable table" skirts the simplicity the local rules "seem to encourage" (*Id.*).

The Court concludes that Defendants' motion properly complies with the local rules. *See* W D Tex Loc R CV-7(j). It is undisputed that Defendants' counsel met in person with Connor on July 30, 2019 to discuss their intention to seek attorneys' fees (*See* Pl's Resp, Dkt 61, at 4). During

that meeting, Defendants “repeatedly asked” for Connor’s objections to the fee amount, but Connor only offered a specific objection to one eight-hour billing entry (Defs’ Reply, Dkt 59, at 6). Defendants noted this objection in their motion and properly “certified the reason why the matter could not be resolved by agreement” W D Tex Loc R CV-7(j), (*see also* Mot Att’y Fees, Dkt 59, at 5–7 (“The parties could not reach an agreement because Plaintiff offered [an amount] inconsistent with Defense counsel’s authority”)). And Rule 7(j) imposes no time requirement for a conference. *See* W D Tex. Loc R CV-7(j). From the Court’s perspective, fifteen minutes is sufficient to entertain that single objection.

Moreover, Connor’s contention that she “could not articulate a specific objection” to “an oral request for \$40,000” because Defendants tendered the fee-bill to her “only 30 minutes before the meeting convened” is a flagrant misrepresentation of the facts (Pl’s Resp, Dkt 61, at 5). Defendants provided statements and draft bills with their Motion for Attorneys’ Fees and Costs pursuant to the order from the Court of Appeals, (Dkt 49), on June 25, 2019 (Orig Mot Att’y Fees, Dkt. 50). Defendants emailed Connor with an updated set of statements on July 24, 2019, a full six days before the conference (Email, Dkt 63-1, at 1). In that same email, Defendants’ counsel expressly indicated that Defendants intended to seek attorneys’ fees and costs incurred for the entire appeal and additional sanctions in the form of attorneys’ fees and costs related to the rest of the case (*Id.* at 1). Connor had the time and the information necessary to formulate her objections ahead of the conference and did not do so. She cannot now misrepresent the record to manufacture noncompliance with the local rules in an attempt to evade sanctions.

Connor’s argument that Defendants’ motion should be denied because it “does not comply with the drafting and certification requirements of the rule” is likewise baseless (Pl’s Resp, Dkt 61, at 6). Defendants’ motion contains the requisite chronological billing activity, affidavit, and memorandum setting forth the method by which fees were computed W D Tex. Loc R CV-

7(j) There is no requirement that a movant for reasonable attorneys' fees include "a more easily readable table," (Pl's Resp, Dkt 61, at 6), billing records provide sufficient support for the legal services rendered by Defendants in defending this action. *People's Capital & Leasing Corp. v McClung*, No 5 17-CV-484-OLG, 2018 WL 7291447, at *2 (W.D Tex Aug 20, 2018) ("Plaintiff's attorney's fees request is properly supported by copies of the invoices for legal services ") Moreover, Defendant's counsel attested to the reasonableness of these rates in an affidavit attached to the motion (Tschirhart Aff , Dkt. 59-2, at 1–2), W D Tex Loc. R CV-7(j)

Thus, the Court concludes that Defendants' Motion for Attorneys' Fees complies with the local rules and Connor's arguments to the contrary are, predictably, without merit The Court will now turn to Connor's next argument pertaining to the scope of the Court of Appeals' mandate

2. Defendants are Entitled to Fees and Costs for the Entire Appeal

Connor contends that Defendants' request for attorneys' fees and costs incurred for the entire appeal should be denied because the Court of Appeals "rejected" Defendants' "repeated requests in the appellate court to award fees and sanctions for frivolous appeal " (Pl's Resp , Dkt 61, at 8) In support of this argument, Connor cites to the text of the Court of Appeals' order, which she notes omits the words "frivolous" and "Rule 38" and cites only to 28 U S C § 1912 *Id* Connor interprets these omissions to mean the Court of Appeals denied Defendants' request for sanctions pursuant to Rule 38 and instead limited the scope of sanctions on remand to the delay associated with Connor's decision to file a motion for panel rehearing (*Id*)

Under Federal Rule of Appellate Procedure 38, "[i]f a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee " Meanwhile, 28 U S C § 1912 provides that "[w]here a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and

single or double costs ” 28 U S C § 1912 Importantly, the rule—unlike the statute—allows a court to order damages and costs for a frivolous appeal without finding that the appeal resulted in delay See Fed R App P 38 advisory committee notes to 1967 adoption, *see also State of Tex. v. Gulf Water Benefaction Co* , 679 F 2d 85, 87 n 1 (5th Cir 1982), *Hagerty v. Succession of Clement*, 749 F 2d 217, 222 (5th Cir 1984) (“[T]he courts of appeals quite properly allow damages, attorney’s fees and other expenses incurred by an appellee if the appeal is frivolous without requiring a showing that the appeal resulted in delay”) An award of damages and double costs as sanctions for the filing of a frivolous appeal “may be made against an appellant under 28 U S C § 1912 and Fed R App P 38” *Olympia Co v. Celotex Corp.*, 771 F 2d 888, 893 (5th Cir 1985) Thus, if a frivolous appeal results in delay, courts may use Rule 38 and 28 U S C § 1912 interchangeably See *Exhibitors Poster Exch , Inc. v Nat’l Screen Serv Corp.*, 78 F.R.D 192, 195 (E D La 1978)

Having reviewed the Court of Appeals’ order and the appellate record as a whole, the Court concludes that it may determine costs and damages related to the entire appeal; that is, the Court of Appeals’ mandate does not limit apportionable damages to the delay associated with Connor’s motion for panel rehearing As an initial matter, the Court of Appeals *granted* Defendants’ motion for appellate sanctions (See Fifth Cir Order, Dkt 49, at 1 (“**IT IS ORDERED** that appellees’ motion for sanctions, attorney fees, and costs is **GRANTED**”)) Defendants based their appellate motion for sanctions on the frivolousness of Connor’s entire appeal, not on the delay associated with her filing a motion for panel rehearing (Defs’ App Mot Sanctions, Dkt 50, Ex U, at 2 (“[T]he current appeal is frivolous on its face in that Appellant makes the same arguments that have been previously rejected by the trial court and this honorable Court”) Throughout the motion, Defendants specifically argued for sanctions pursuant to Rule 38, cited cases pertaining to frivolous appeals within the purview of Rule 38, and sought relief pursuant to Rule 38 (See *id.* (“Sanctions under Rule 38 are appropriate”), *id.* (citing cases pertaining to sanctions imposed pursuant to Rule

38), *id* at 6 (“For the foregoing reasons, this Court should find that Appellant’s arguments are frivolous, that sanctions under Fed R App P 38 are warranted, that Appellees have incurred attorneys’ fees and expenses as a result of Appellant’s frivolous litigation”) Even Connor concedes that the appellate motion “largely” “requests sanctions and damages pursuant to Rule of Appellate Procedure 38, and only requests relief under 28 U S C § 1912 on the final page” (Resp , Dkt 61, at 7) Thus, granting Defendants’ motion *was* a finding that Connor’s appeal was frivolous

Connor’s textual argument is therefore unavailing While the Court of Appeals’ order does “remand this case to the district court to determine the amount of costs and damages to be paid to appellees, as provided by 28 U S C § 1912,” courts often use Rule 38 and 28 U S C § 1912 interchangeably when the appeal is frivolous and resulted in delay *Exhibitors Poster Exch , Inc v Nat’l Screen Serv. Corp.*, 78 F R D 192, 195 (E D La 1978) (“Various courts have referred to and utilized F R A P 38 and 28 U S C § 1912 interchangeably”, *see also Exhibitors Poster Exch., Inc. v. Nat’l Screen Serv Corp*, 543 F 2d 1106, 1107 (5th Cir 1976) (“The appellees have filed in this Court a motion for damages for frivolous appeal under Rule 38, F R A P The motion is well taken We remand this case to the district court to determine the amount of costs and damages to be paid to the appellees, as provided by 28 U S C. § 1912 ”); *Olympia Co. v. Celotex Corp*, 771 F 2d 888, 892–93 (5th Cir 1985) (noting that an award of damages and double costs for the filing of a frivolous appeal “may be made against an appellant under 28 U S C. § 1912 and Fed R App P 38”) This is especially so when the appeal has resulted in delay, indeed, the only reason to distinguish between the statutory basis for sanctions and the rule would be if the Court of Appeals intended to award sanctions for a frivolous appeal without making a finding that the appeal resulted in delay *See* Fed R App P 38 advisory committee’s note to 1967 adoption

Finally, in citing to § 1912, the Court of Appeals did not limit the scope of sanctions to the delay associated with Connor’s filing of a motion for panel rehearing, as she contends Nothing in

Defendants' motion for appellate sanctions, which the Court of Appeals granted, limits the requested relief to the delay associated with one portion of Connor's appeal and nothing in the Court of Appeals' order imposes such a limitation either (*See* Defs' Mot App Sanctions, Dkt 50, Ex. U, 5th Cir Order, Dkt 49, at 1–2) For nearly a year, Connor prosecuted a meritless appeal with no legitimate prospect of success After filing her Notice of Appeal, (Dkt 44), she ignored the transcript order deadline, (Dkt 50, Ex A), waited six days after the Clerk sent her an email about missing the deadline to request more time, (*id.* at Ex. C), delayed ordering the transcript again, (*id.* at Ex D), moved for a fifteen-day extension to file her appellate brief, (Dkt 50, Ex F), and then filed for another extension the day before her brief was due, (Dkt 50 at Ex G) When the Court of Appeals denied Connor's motion for an extension, (Dkt 50 at Ex I), Connor filed a motion to reconsider arguing that “in seventeen years of practice, she had never personally been denied an extension of time to file an opening brief ” (Dkt 50, Ex J) The Court of Appeals denied her motion and dismissed her appeal for want of prosecution shortly after (Dkt 50, Ex K, L) Then, Connor filed two additional motions, which the Court of Appeals took no action on because it had dismissed her appeal (Mot Attorneys' Fees, Dkt 50, at 4) Connor then filed a motion to reopen the appeal (Dkt 50, Ex O)

The Court of Appeals granted her motion and reinstated her appeal (Dkt 50, Ex Q) After considering Connor's arguments on appeal, the Court of Appeals then affirmed this Court's order without an opinion (Dkt 50, Ex S) In an attempt to further prolong meritless litigation, Connor filed a petition for panel rehearing (Dkt 50, Ex T) At this point, after almost a year of investing time and resources into defending against Connor's various delay tactics, Defendants filed a motion for appellate sanctions, which the Court of Appeals granted. (Dkt 50, Ex. U)

Because Connor's frivolous appeal resulted in nearly a year of delay, the Court of Appeals remanded to the District Court for a determination of costs and damages pursuant to § 1912. *See*

Fed R App P 38 advisory committee's note (explaining that Rule 38 and § 1912 can be used interchangeably, the only difference being that § 1912 requires a showing of delay) And the appellate record makes clear that Connor delayed prompt adjudication of this dispute throughout the entire appeal

Finding no reason to limit the scope of sanctions to the attorneys' fees and costs associated with Connor's motion for panel rehearing, the Court will assess against Connor the attorneys' fees and costs incurred by Defendants in defending against the entire frivolous appeal.

1. Attorneys' Fees

Defendants contend that from October 1, 2018 (the date Connor filed her Notice of Appeal) through June 21, 2019 (the date the Court of Appeals issued its mandate) they incurred \$13,636.50 in reasonable and necessary attorneys' fees and \$276.27 in expenses defending against Connor's frivolous appeal (Mot Sanctions, Dkt 59, at 5) As supporting documentation, Defendants submit an affidavit from Defendants' counsel of record and detailed billing records (Tschirhart, Dkt 59-2, at 1–2, Invoices, Dkt. 59-3, at 1–18) Defendants' request for attorneys' fees is based on the following rates: \$195 (later \$210) per hour for Partners, \$175 (later \$180) per hour for Senior Associates, and \$75 (later \$85) for paralegal time (Tschirhart Aff, Dkt 59-2, at 1) Defendants' memorandum notes that these fees “are based upon a bargained-for agreement” and represent “the same fees commonly charged for this kind of work by our Firm all over the State of Texas” (Defs' Fee Calculation Memo, Dkt. 59-4, at 2)

The Court finds that the attorneys' fees requested are reasonable in light of the well-known *Johnson* factors.² *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989). In defending against Connor's appeal, Defendants' counsel spent nearly a year reviewing and drafting responses to Connor's various requests for extensions of time and other obstinate efforts to deny Defendants a prompt resolution of the dispute. (See e.g. Invoice, Dkt. 59-3, at 8–17). Upon examining Defendants' detailed records, the Court finds the time and labor documented to be reasonable in light of the issues involved and the skill required. See *id.* Moreover, the fees charged for the services are consistent with fees charged for such services in the geographic area amongst lawyers with similar experience, reputation, and ability. See *id.* Finally, Connor has not challenged the requested rates and fees; her response to Defendants' attorney's fees motion only contests compliance with W.D. Tex. Loc. R. CV-7(j) and the scope of the Court of Appeals' mandate.³ While she proffers her own attorneys' fee offer—\$525.00—she does not explain why Defendants' requested rates and fees, supported by invoices, affidavits, and memorandum, are unreasonable. Thus, the Court concludes that Defendants are entitled to the \$13,636.50 in requested attorneys' fees and \$276.27 in requested expenses.

² The *Johnson* factors are (1) the time and labor required to represent the client or clients, (2) the novelty and difficulty of the issues in the case, (3) the skill required to perform the legal services properly, (4) the preclusion of other employment by the attorney, (5) the customary fee charged for those services in the relevant community, (6) whether the fee is fixed or contingent, (7) the time limitations imposed by the client or circumstances, (8) the amount involved and results obtained, (9) the experience, reputation, and ability of the attorney, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989).

³ While Connor objected to one billing entry when the parties met to confer, Defendants "adjusted that particular entry, in response to [Connor's] objection, by reducing it accordingly," (Defs.' Reply, Dkt. 63, at 4), and Connor's Response in Opposition to Defendants' Motion for Attorneys' Fees and Costs, (Dkt. 61), does not raise objections with respect to the requested rates and fees, only to the manner in which these rates and fees were discussed. See Pl.'s Resp., Dkt. 61, at 3–4 (objecting to Defendants' "global request for \$40,000" as noncompliant with the meet and confer requirements under W.D. Tex. Loc. R. CV-7(j), but raising no other specific objections to the rates and fees incurred).

ii. Costs

The Court of Appeals also remanded this case for a determination of costs (*See* Fifth Cir, Mandate, Dkt 49, at 1) “Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs” 28 U S C § 1912 Federal Rule of Appellate Procedure 38 likewise allows for “just damages and single and double costs to the appellee” when an appeal is frivolous *Garza v. Westergren*, 908 F 2d 27, 29 (5th Cir 1990) (“[A]n award of attorney’s fees and double costs pursuant to Federal Rule of Appellate Procedure 38 is proper, because this appeal is frivolous”) Defendants submitted a Bill of Costs to the Court of Appeals in the amount of \$29 40 in taxable costs, (Bill of Costs, Dkt 50, Ex W, at 166), and ask the Court to award double costs in the amount of \$58 00 (Mot Att’y Fees, Dkt 59, at 3–5)

The Court concludes that this case is a textbook example of a scenario where double costs are warranted Here, Connor’s appeal was not only frivolous, but also resulted in significant delay For nearly a year, Connor prolonged unmeritorious litigation, with no legitimate prospect of success In continuing to litigate a meritless appeal and leaving no delay tactic unturned, Connor “imposed an unnecessary burden on [the Court of Appeals] and has infringed on the rights of the appellees who are entitled to a prompt adjudication of this dispute.” *Hagerty v. Succession of Clement*, 749 F 2d 217, 222 (5th Cir 1984) Accordingly, the Court determines that Defendants’ request for double costs in the amount of \$58 00 is warranted (*See* Dkt 59, at 5)

B. Motion for Additional Sanctions

In response to this Court’s order, (Dkt 56), Defendants filed a motion requesting additional sanctions in the form of “all of the attorneys’ fees and costs incurred by Defendants in the proceedings before this honorable court” (Mot Add. Sanctions, Dkt 60, at 2) In the alternative, Defendants ask the Court to sanction Connor by “entering an Order temporarily disbar[ing] [her]

from the practice of law before the Courts in the Western District of Texas for a period of not less than six (6) months” (*Id.* at 2–3) Ultimately, Defendants just want the Court to “fashion a sanction that would deter [Connor] from continuing to use the [c]ourts as a weapon of harassment against them and those who are connected with them.” (*Id.* at 2) Defendants provide two possible bases for additional sanctions First, Defendants contend that Connor, a licensed attorney, could be sanctioned pursuant to 28 U S C § 1927 Second, Defendants contend the Court can sanction Connor pursuant to its inherent authority

Connor argues that this Court lacks the authority to issue additional sanctions because the Court of Appeals’ remand order only allows for an assessment of fees for delay under 28 U S C § 1912, which Connor isolates to fees accrued by the Defendants after she filed a motion for panel rehearing (Pl’s Resp, Dkt 62, at 2) She argues that on remand a trial court cannot deviate from the mandate of the appellate court and that the Court of Appeals’ mandate requires this Court to assess fees only for delay under 28 U S.C § 1912 (*Id.*)

As previously discussed, the Court finds nothing in the text of the Court of Appeals’ remand order that limits sanctions to the delay associated with Connor’s motion for panel rehearing *See infra* Part II A 2 Moreover, the Court of Appeals’ mandate covers appellate sanctions and says nothing about this Court’s power to sanction Connor for her unreasonable and vexatious conduct before this Court Because the pre-filing injunction imposed by this Court, (Order, Dkt 42, at 9), has not deterred Connor from continuing to harass Defendants with unmeritorious litigation—both in this Court and others—the Court will assess additional monetary sanctions against Connor

1 Sanctions pursuant to 28 U S C § 1927

Under 28 U S C § 1927, “[a]ny attorney who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct” To impose sanctions

pursuant to this provision, the conduct multiplying the proceedings must be both “unreasonable” and “vexatious.” *Morrison v Walker*, 939 F.3d 633, 637–38 (5th Cir. 2019). “Conduct is ‘unreasonable and vexatious’ if there is evidence of the ‘persistent prosecution of a meritless claim’ and of a ‘reckless disregard of the duty owed to the court.’” *Id.* “An attorney acts with “reckless disregard” of [her] duty to the court when [s]he, without reasonable inquiry, advances a baseless claim despite clear evidence undermining [her] factual contentions.” *Id.* at 638.

In support of § 1927 sanctions, district courts often rely on “repeated filings despite warnings from the court, or other proof of excessive litigiousness, to support imposing sanctions.” *Procter & Gamble Co. v. Amway Corp.*, 280 F.3d 519, 525 (5th Cir. 2002). Before imposing such sanctions, the court must “make detailed factual findings,” including “(1) identifying the sanctionable conduct as distinct from the case’s merits, (2) linking the sanctionable conduct and the sanction’s size, and (3) identifying the legal basis for each sanction.” *Morrison*, 939 F.3d at 638. “To shift the entire cost of defense, the claimant must prove, by clear and convincing evidence, that *every facet* of the litigation was patently meritless, and counsel must have lacked a reason to file the suit and must wrongfully have persisted in its prosecution through discovery, pre-trial motions, and trial.” *Procter & Gamble Co.*, 280 F.3d at 526 (emphasis in original).

For the reasons stated below, the Court concludes that Connor’s conduct in filing and persistently litigating this lawsuit unreasonably and vexatiously multiplied the proceedings against Defendants and sanctions are thus warranted under § 1927.

1. Reasonableness

This is Connor’s third, meritless First Amendment retaliation lawsuit before this Court. In bringing this latest lawsuit, Connor knew that this Court had twice dismissed—and the Court of Appeals had previously affirmed dismissal of—Connor’s nearly identical claims. *See McIntyre v. Castro*, No. 1:15-CV-1100 RP, 2016 WL 1714919, at *4 (W.D. Tex. Apr. 8, 2016), *aff’d*, 670 F. App’x 250

(5th Cir. 2016), *reh'g denied* (Dec. 9, 2016) (“*McIntyre I*”), *McIntyre v. Castro*, No. 1:16-CV-490 RP, 2017 WL 1483572, at *3 (W.D. Tex. Apr. 25, 2017), *aff'd in part sub nom. Connor v. Castro*, 719 F. App'x 376 (5th Cir. 2018) (“*McIntyre II*”). By filing this third lawsuit, Connor persistently prosecuted a meritless claim and thus unreasonably multiplied proceedings that should have concluded with the resolution of *McIntyre I*.

ii. Vexatiousness

To impose sanctions pursuant to § 1927, counsel's multiplication of proceedings must be not only unreasonable, but also vexatious. *See Morrison*, 939 F.3d at 637–38. The Court concludes that Connor vexatiously multiplied the proceedings in reckless disregard of the duty owed to this Court. *See id.* This Court's dismissal of *McIntyre I* put Connor on notice that claims for First Amendment retaliation based on a benign litigation status update were meritless. *See McIntyre I*, 2016 WL 1714919, at *4. *McIntyre II* did not remedy these deficiencies and this Court admonished Connor's decision to continue to assert a claim nearly identical to the one previously dismissed, questioned her motivation, and warned of possible future sanctions if she continued to exhibit conduct that “falls short of what this Court expects of its officers.” *McIntyre II*, 2017 WL 1483572, at *6. Connor was not deterred. Instead, she filed a nearly identical lawsuit, indifferent to this Court's warnings (Compl., Dkt. 1). In light of the record as a whole, the Court concludes that Connor pursued this third lawsuit in bad faith and for the improper purpose of harassing and annoying Defendants. Such conduct constitutes a reckless disregard of the duty owed to this Court.

As noted in this Court's previous order, “Connor's extensive and meritless litigation history against Defendants and other Lost Creek directors indicates a commitment to use the courts as a weapon of harassment against them.” (Order, Dkt. 42, at 8–9). Despite this Court's two prior dismissals of nearly identical First Amendment retaliation claims against Defendants, she filed a third lawsuit alleging First Amendment retaliation on the basis of the same benign litigation update.

See McIntyre v. Castro, No. 1-15-CV-1100 RP, 2016 WL 1714919, at *4 (W.D. Tex. Apr. 8, 2016), *aff'd*, 670 F. App'x 250 (5th Cir. 2016), *reh'g denied* (Dec. 9, 2016) (“*McIntyre I*”), *McIntyre v. Castro*, No. 1-16-CV-490 RP, 2017 WL 1483572, at *3 (W.D. Tex. Apr. 25, 2017), *aff'd in part sub nom Connor v. Castro*, 719 F. App'x 376 (5th Cir. 2018) (“*McIntyre II*”), *Connor v. Stewart*, No. 1-17-CV-827-RP, 2018 WL 2994644, at *1 (W.D. Tex. June 14, 2018), *aff'd*, 770 F. App'x 244 (5th Cir. 2019). In doing so, she advanced a “baseless claim despite clear evidence undermining her factual contentions,” namely, two prior dismissals and an affirmance by the Court of Appeals. *See id.* Throughout the litigation, Connor made claims that were “not merely meritless” but also made in bad faith for the purpose of harassing Defendants. (*See* Order, Dkt. 42, at 7). Given Connor’s repeated efforts to advance allegations against Defendants in bad faith at every step of the litigation, shifting the entire burden of defending this lawsuit onto Connor is not only appropriate, but necessary to deter Connor from harassing Defendants with more meritless litigation in the future.

Moreover, the monetary sanctions issued by state courts in similar litigation have not deterred Connor from filing this action, indicating the need for additional monetary sanctions. (*See* Orders, Dkt. 38-2). Even more troubling, Connor recently misrepresented the record in this case in a related state court action, attesting to a state court judge that this Court had dismissed her state law claims, when in fact this Court had merely declined to exercise supplemental jurisdiction over them and remanded them back to Texas state court. (*See* Advisory to the Court, Dkt. 67, at 1–5), *compare McIntyre II*, 2017 WL 1483572, at *5 (“In light of the dismissal of Plaintiffs’ federal claims, this Court will decline to exercise supplemental jurisdiction. Accordingly, the state law claims against Defendants are properly remanded back to Texas state court.”) *with* Connor’s Request for Abstract Judgment, Dkt. 67-1, at 1 (“[T]he record clearly indicates that the claims dismissed by the Hon. Karin Crump had already been dismissed by the Western District of Texas, and therefore, the order is subject to collateral attack and injunctive relief.”) As this Court has already admonished, “Connor

has the legal training and experience to understand that the state-law portion of Defendants' motion was not adjudicated by this Court, which remanded Connor's state-law claims " (Dkt 31 at 7) Therefore, Defendants' requested sanctions are also appropriate to deter Connor from misrepresenting this Court's record for the purpose of harassing defendants in an alternate forum.

Finally, Connor's frivolous filings have needlessly diverted this Court's time and resources away from the hundreds of meritorious cases and controversies on its docket (*See* Order, Dkt 42, at 8 (discussing the burden that Connor's high volume of motions in this action and previous actions have had on this Court)) Thus, in continuing to prosecute her claims in bad faith, Connor not only saddled Defendants with the burden of defending against frivolous claims, but she also impeded this Court's ability to direct its attention to the meritorious plaintiffs on its docket in need of relief Connor has imposed a similar burden on the Texas state court system *See id* (discussing the burden Connor's litigation tactics have placed on the state court system, particularly the five-hundred-page state court record in *McIntyre II*) Repeated admonitions and the threat of sanctions both by this Court and the Court of Appeals have not deterred Connor from continuing to litigate in bad faith *McIntyre II*, 2017 WL 1483572, at *6 ("In short, the Court is troubled by Connor's conduct in this litigation the Court will not impose sanctions at this time, should similar concerns arise if this matter is again before this Court, the Court will not hesitate to consider sanctions—whether on motion or on its own initiative"), (*see also* Fifth Cir Mandate, Dkt 49, at 2 ("[A]ppellant, a lawyer representing herself pro se, is cautioned that any further prolongation of this case will likely result in additional sanctions")) The Court concludes that severe monetary sanctions are necessary to send the message to Connor that bad faith litigation brought for the purpose of harassment will not be tolerated, especially by an officer of the Court Thus, this Court will assess the full cost of defending this suit against Connor

In defending against Connor's baseless claims before this Court, Defendants incurred a total of \$28,646.50 in reasonable and necessary attorneys' fees and \$435.98 in expenses (Mot. Add Sanctions, Dkt. 60, at 6). In reviewing the submitted invoices, affidavit, and memorandum in support of this figure, the Court determines that both the work expended and the rates assessed are reasonable for the geographic area. Because Connor has not disputed the reasonableness of these sums and because the record demonstrates that "every facet" of Connor's third lawsuit was "patently meritless" and brought in bad faith for the improper purpose of harassing Defendants, (*see* Order, Dkt. 42, at 4-9), the Court concludes shifting the entire cost of the defense to Connor is appropriate pursuant to 28 U.S.C. § 1927.⁴ *See Procter & Gamble Co.*, 280 F.3d at 526. In addition to these monetary sanctions, the Court reminds Connor that a pre-filing injunction remains in place

Connor may not file a civil action against Defendants or other officers of the Lost Creek Municipal Utility District, directly or indirectly, in the Western District of Texas without receiving written leave from a federal district judge for this district. Any future complaint against Defendants or other officers of the Lost Creek Municipal Utility District in this district shall be accompanied by a motion for leave, and no summons shall issue unless leave is granted.

(Dkt. 42 at 9)

To echo the Court of Appeals, "[t]his case is over."

III. CONCLUSION

Accordingly, **IT IS ORDERED** that Defendants' Motion for Attorneys' Fees and Costs, (Dkt. 59), is **GRANTED**.


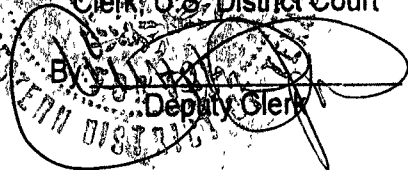
⁴ To the extent Connor's conduct is not covered by one of the other sanctioning provisions, this Court relies on its inherent power to impose attorneys' fees as a sanction for bad-faith conduct. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991) ("There is, therefore, nothing in the other sanctioning mechanisms or prior cases interpreting them that warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct. This is plainly the case where the conduct at issue is not covered by one of the other sanctioning provisions. But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules.")

IT IS FURTHER ORDERED that Defendants' Motion for Additional Sanctions, (Dkt 60),
is **GRANTED**

Defendants are entitled to an award of **\$13,636.50 in attorneys' fees, \$276.27 in expenses, and double costs in the amount of \$58.00** for the damages incurred in defending against Connor's frivolous appeal

Defendants are further entitled to **\$28,646.50 attorneys' fees and \$435.98 in expenses** incurred in defending this matter before this Court

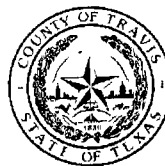
SIGNED on January 27, 2020


ROBERT PITMAN
UNITED STATES DISTRICT JUDGE
A true copy of the original, I certify.
Clerk, U.S. District Court

B. J. L. H. T. S.
Deputy Clerk

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded

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Dana DeBeauvoir

Dana DeBeauvoir, County Clerk
Travis County, Texas

Feb 10, 2020 02:09 PM

Fee: \$106.00

WELLINB

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MADELEINE CONNOR,
Plaintiff,
vs.

LEAH STEWART,
ERIC CASTRO, and
CHUCK McCORMICK,
Defendants.

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NO. 1:17-CV-00827-RP

ORDER
GRANTING STAY OF EXECUTION

Before the Court on emergency hearing, is Madeleine Connor's Application for a Stay of Execution.

The Court grants the stay, as she has posted security to suspend execution of the Final Judgment in the amount of \$30,000, and this court finds that no supersedeas bond payment is required to supersede the judgment for attorney's fees in this case.

Accordingly, the execution of the judgment by writ, and/or enforcement and sale of Madeleine Connor's property located at 6304 Whitemarsh Valley Walk, Travis County, Austin, Texas 78746, is hereby STAYED.

The Court further orders that delivery of this Order to the Travis County Constable Precinct #3 by email or other means shall be sufficient notice to effectuate this stay of execution.

Signed this _____ day of _____, 2020

The Honorable Judge Presiding